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THE

POWER OF CONGRESS

OVER THE

DISTRICT OF COLUMBIA.

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POWER OF CONGRESS

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DISTRICT OF COLUMBIA.

A CIVILIZED community presupposes a government of law. If that government be a republic, its citizens are the sole *sources*, as well as the *subjects* of its power. Its constitution is their bill of directions to their own agents—a grant authorizing the exercise of certain powers, and prohibiting that of others. In the Constitution of the United States, whatever else may be obscure, the clause granting power to Congress over the Federal District may well defy misconstruction. Art. 1, Sec. 8, Clause 18: "The Congress shall have power to exercise exclusive legislation, *in all cases whatsoever*, over such District." Congress may make laws for the District "in all *cases*," not of all *kinds*; not all *laws* whatsoever, but laws "in all *cases* whatsoever." The grant respects the *subjects* of legislation, *not* the moral nature of the laws. The law-making power every where is subject to *moral* restrictions, whether limited by constitutions or not. No legislature can authorize murder, nor make honesty penal, nor virtue a crime, nor exact impossibilities. In these and similar respects, the power of Congress is held in check by principles, existing in the nature of things, not imposed by the Constitution, but presupposed and assumed by it. The power of Congress over the District is restricted only by those principles that limit ordinary legislation, and, in some respects, it has even wider scope.

In common with the legislatures of the States, Congress cannot constitutionally pass ex post facto laws in criminal cases, nor suspend the writ of habeas corpus, nor pass a bill of attainder, nor abridge the freedom of speech and of the press, nor invade the right of the people to be secure in their persons, houses, papers, and effects, nor enact laws respecting an establishment of religion. These are general limitations. Congress cannot do these things *any where*. The exact import, therefore, of the clause "in all cases whatsoever," is, *on all subjects within the appropriate sphere of legislation*. Some legislatures are restrained by constitutions, from the exercise of powers strictly within the proper sphere of legislation. Congressional power over the District has no such restraint. It traverses the whole field of legitimate legislation. All the power which any legislature has within its own jurisdiction, Congress holds over the District of Columbia.

It has been objected that the clause in question respects merely

police regulations, and that its sole design was to enable Congress to protect itself against popular tumults. But if the convention that framed the Constitution aimed to provide for a *single* case only, why did they provide for "*all* cases whatsoever?" Besides, this clause was opposed in many of the state conventions, because the grant of power was extended to "*all* cases whatsoever," instead of being restricted to police regulations *alone*. In the Virginia Convention, George Mason, the father of the Virginia Constitution, Patrick Henry, Mr. Grayson, and others, assailed it on that ground. Mr. Mason said, "This clause gives an unlimited authority in every possible case within the District. He would willingly give them exclusive power as far as respected the police and good government of the place, but he would give them no more." Mr. Grayson exclaimed against so large a grant of power—said that control over the *police* was all-sufficient, and "that the Continental Congress never had an idea of exclusive legislation in all cases." Patrick Henry said: "Shall we be told, when about to grant such illimitable authority, that it will never be exercised? Is it consistent with any principle of prudence or good policy, to grant *unlimited, unbounded authority?*" Mr. Madison said in reply: "I did conceive that the clause under consideration was one of those parts which would speak its own praise. I cannot comprehend that the power of legislation over a small District, will involve the dangers which he apprehends. When any power is given, its delegation necessarily involves authority to make laws to execute it. * * * * The powers which are found necessary to be given, are therefore delegated *generally*, and particular and minute specification is left to the Legislature. * * * It is not within the limits of human capacity to delineate on paper all those particular cases and circumstances, in which legislation by the general legislature, would be necessary." Governor Randolph said: "Holland has no ten miles square, but she has the Hague where the deputies of the States assemble. But the influence which it has given the province of Holland, to have the seat of government within its territory, subject in some respects to its control, has been injurious to the other provinces. The wisdom of the convention is therefore manifest in granting to Congress exclusive jurisdiction over the place of their session." (*See debates in the Virginia Convention*, p. 320.) In the forty-third number of the "Federalist," Mr. Madison says: "The indispensable necessity of *complete* authority at the seat of government, carries its own evidence with it."

Finally, that the grant in question is to be interpreted according to the obvious import of its *terms*, and not in such a way as to restrict it to *police* regulations, is proved by the fact, that the State of Virginia proposed an amendment to the United States Constitution at the time of its adoption, providing that this clause "should be so construed as to give power only over the *police and good government* of said District," *which amendment was rejected.* Fourteen other amendments, proposed at the same time by Virginia, were *adopted.*

The former part of the clause under consideration, "Congress shall have power to exercise *exclusive* legislation," gives *sole* jurisdiction, and the latter part, "in all cases whatsoever," defines the *extent* of it. Since, then, Congress is the *sole* legislature within the District, and since its power is limited only by the checks common to all legislatures, it follows that what the law-making power is intrinsically competent to do *any* where, Congress is competent to do in the District of Columbia.

Statement of the Question at Issue.

Having disposed of preliminaries, we proceed to argue the *real question* at issue. Is the law-making power competent to abolish slavery when not restricted in that particular by constitutional provisions—or, *Is the abolition of slavery within the appropriate sphere of legislation?*

In every government, absolute sovereignty exists *somewhere*. In the United States it exists primarily with the *people*, and *ultimate* sovereignty *always* exists with them. In each of the States, the legislature possesses a *representative* sovereignty, delegated by the people through the Constitution—the people thus committing to the legislature a portion of their sovereignty, and specifying in their constitutions the amount and the conditions of the grant. That the *people* in any state where slavery exists, have the power to abolish it, none will deny. If the legislature have not the power, it is because *the people* have reserved it to themselves. Had they lodged with the legislature "power to exercise exclusive legislation in all cases whatsoever," they would have parted with their sovereignty over the legislation of the State, and so far forth the legislature would have become *the people*, clothed with all their functions, and as such competent, *during the continuance of the grant*, to do whatever the people might have done before the surrender of their power: consequently, they would have the power to abolish slavery. The sovereignty of the District of Columbia exists *somewhere*—where is it lodged? The citizens of the District have no legislature of their own, no representation in Congress, and no political power whatever. Maryland and Virginia have surrendered to the United States their "full and absolute right and entire sovereignty," and the people of the United States have committed to Congress by the Constitution, the power to "exercise exclusive legislation in all cases whatsoever over such District."

Thus, the sovereignty of the District of Columbia, is shown to reside solely in the Congress of the United States; and since the power of the people of a state to abolish slavery within their own limits, results from their entire sovereignty within the state, so the power of Congress to abolish slavery in the District, results from its entire *sovereignty* within the District. If it be objected that Congress can have no more power over the District, than was held by the legislatures of Maryland and Virginia, we ask what clause in the constitution graduates the power of Congress by the standard of a state legislature? Was the United States constitution worked into its present shape under the measuring line and square of Virginia and Maryland? and is its power to be bev-

elled down till it can run in the grooves of state legislation? There is a deal of prating about constitutional power over the District, as though Congress were indebted for it to Maryland and Virginia. The powers of those states, whether few or many, prodigies or nullities, have nothing to do with the question. As well thrust in the powers of the Grand Lama to join issue upon, or twist papal bulls into constitutional tether, with which to curb congressional action. The Constitution of the United States gives power to Congress, and takes it away, and *it alone.* Maryland and Virginia adopted the Constitution *before* they ceded to the United States the territory of the District. By their acts of cession, they abdicated their own sovereignty over the District, and thus made room for that provided by the United States constitution, which sovereignty was to commence as soon as a cession of territory by states, and its acceptance by Congress furnished a sphere for its exercise.

That the abolition of slavery is within the sphere of legislation, I argue, *secondly,* from the fact, that *slavery as a legal system, is the creature of legislation.* The law by *creating* slavery, not only affirmed its *existence* to be within the sphere and under the control of legislation, but equally, the *conditions* and *terms* of its existence, and the *question* whether or not it *should* exist. Of course legislation would not travel *out* of its sphere, in abolishing what is *within* it, and what was recognised to be within it, by its own act. Cannot legislatures repeal their own laws? If law can take from a man his rights, it can give them back again. If it can say, "your body belongs to your neighbor," it can say, "it belongs to *yourself,* and I will sustain your right." If it can annul a man's right to himself, held by express grant from his Maker, and can create for another an artificial title to him, can it not annul the artificial title, and leave the original owner to hold himself by his original title?

3. *The abolition of slavery has always been considered within the appropriate sphere of legislation.* Almost every civilized nation has abolished slavery by law. The history of legislation since the revival of letters, is a record crowded with testimony to the universally admitted competency of the law-making power to abolish slavery. It is so manifestly an attribute not merely of absolute sovereignty, but even of ordinary legislation, that the competency of a legislature to exercise it, may well nigh be reckoned among the legal axioms of the civilized world. Even the night of the dark ages was not dark enough to make this invisible.

The Abolition decree of the great council of England was passed in 1102. The memorable Irish decree, "that all the English slaves in the whole of Ireland, be immediately emancipated and restored to their former liberty," was issued in 1171. Slavery in England was abolished by a general charter of emancipation in 1381. Passing over many instances of the abolition of slavery by law, both during the middle ages and since the reformation, we find them multiplying as we approach our own times. In 1776 slavery was abolished in Prussia by special edict. In St. Domingo, Cayenne, Guadaloupe

and Martinique, in 1794, where more than 600,000 slaves were emancipated by the French government. In Java, 1811; in Ceylon, 1815; in Buenos Ayres, 1816; in St. Helena, 1819; in Colombia, 1821: by the Congress of Chili in 1821; in Cape Colony, 1828; in Malacca, 1825; in the southern provinces of Birmah, 1826; in Bolivia, 1826; in Peru, Guatemala, and Monte Video, 1828, in Jamaica, Barbadoes, Bermudas, Bahamas, the Mauritius, St. Christopher's, Nevis, the Virgin Islands, Antigua, Montserrat, Dominica, St. Vincents, Grenada, Berbice, Tobago, St. Lucia, Trinidad, Honduras, Demarara, and the Cape of Good Hope, on the 1st of August, 1834. But waving details, suffice it to say, that England, France, Spain, Portugal, Sweden, Denmark, Austria, Prussia, and Germany, have all and often given their testimony to the competency of the law to abolish slavery. In our own country, the Legislature of Pennsylvania passed an act of abolition in 1780, Connecticut, in 1784; Rhode Island, 1784; New-York, 1799: New-Jersey, in 1804; Vermont, by Constitution, in 1777; Massachusetts, in 1780; and New Hampshire, in 1784.

When the competency of thelaw-making power to abolish slavery, has thus been recognised every where and for ages, when it has been embodied in the highest precedents, and celebrated in the thousand jubilees of regenerated liberty, is it forsooth an achievement of modern discovery, that such a power is a nullity?—that all these acts of abolition are void, and that the millions disenthralled by them, are, either themselves or their posterity, still legally in bondage?

4. *Legislative power has abolished slavery in its parts.* The law of South Carolina prohibits the working of slaves more than fifteen hours in the twenty-four. [*See Brevard's Digest*, 253.] In other words, it takes from the slaveholder his power over nine hours of the slave's time daily; and if it can take nine hours it may take twenty-four—if two-fifths, then five-fifths. The laws of Georgia prohibit the working of slaves on the first day of the week; and if they can do it for the first, they can for the six following. Laws embodying the same principle have existed for ages in nearly all governments that have tolerated slavery.

The law of North Carolina prohibits the "immoderate" correction of slaves. If it has power to prohibit *immoderate* correction, it can prohibit *moderate* correction—*all* correction, which would be virtual emancipation; for, take from the master the power to inflict pain, and he is master no longer. Cease to ply the slave with the stimulus of fear, and he is free. Laws similar to this exist in slaveholding governments generally.

The Constitution of Mississippi gives the General Assembly power to make laws "to oblige the owners of slaves to *treat them with humanity.*" The Constitution of Missouri has the same clause, and an additional one making it the DUTY of the legislature to pass such laws as may be necessary to secure the *humane* treatment of the slaves This grant of power to those legislatures empowers them to decide

what *is* and what is *not* "humane treatment." Otherwise it gives no "power"—the clause is mere waste paper, and flouts in the face of a mocked and befooled legislature. A clause giving power to require "humane treatment" covers all the *particulars* of such treatment—gives power to exact it in *all respects*—*requiring* certain acts, and *prohibiting* others—maiming, branding, chaining together, allowing each but a quart of corn a day,* and but "one shirt and one pair of pantaloons" in six months†—separating families, destroying marriage, floggings for learning the alphabet and reading the Bible—robbing them of their oath, of jury trial, and of the right to worship God according to conscience—the legislature has power to specify each of these acts—declare that it is not "*humane* treatment," and PROHIBIT it.—The legislature may also believe that driving men and women into the field, and forcing them to work without pay as long as they live, is not "humane treatment," and being constitutionally bound "to *oblige*" masters to practise "humane treatment"—they have the *power* to *prohibit such* treatment, and are bound to do it.

The law of Louisiana makes slaves real estate, prohibiting the holder, if he be also a *land* holder, to separate them from the soil.‡ If it has power to prohibit the sale *without* the soil, it can prohibit the sale *with* it; and if it can prohibit the *sale* as property, it can prohibit the *holding* as property. Similar laws exist in the French, Spanish, and Portuguese colonies.

The law of Louisiana requires the master to give his slaves a certain amount of food and clothing, (*Martin's Digest*, 610.) If it can oblige the master to give the slave *one* thing, it can oblige him to give him another: if food and clothing, then wages, liberty, his own body. Such laws exist in most slaveholding governments.

By the slave law of Connecticut, under which slaves are now held, (for even Connecticut is still a slave State,) slaves might receive and hold property, and prosecute suits in their own name as plaintiffs: [This last was also the law of Virginia in 1795. See Tucker's "Dissertation on Slavery," p. 73.] There were also laws making marriage contracts legal, in certain contingencies, and punishing infringements of them, ["*Reeve's Law of Baron and Femme*," p. 340-1.] Each of the laws enumerated above, does, *in principle*, abolish slavery; and all of them together abolish it *in fact*. True, not as a *whole*, and at a *stroke*, nor all in one place; but in its *parts*, by piecemeal, at divers times and places; thus showing that the abolition of slavery is within the boundary of *legislation*.

* Law of North Carolina, Haywood's Manual, 524-5.

† Law of Louisiana, Martin's Digest, 610.

‡ Virginia made slaves real estate by a law passed in 1705. (*Beverly's Hist. of Va.*, p. 98.) I do not find the precise time when this law was repealed, probably when Virginia became the chief slave breeder for the cotton-growing and sugar-planting country, and made young men and women "from fifteen to twenty-five" the main staple production of the State.

5. *The competency of the law-making power to abolish slavery, has been recognized by all the slaveholding States, either directly or by implication.* Some States recognize it in their *Constitutions*, by giving the legislature power to emancipate such slaves as may "have rendered the state some distinguished service," and others by express prohibitory restrictions. The Constitutions of Mississippi, Arkansas, and other States, restrict the power of the legislature in this respect. Why this express prohibition, if the law-making power *cannot* abolish slavery? A stately farce, indeed, formally to construct a special clause, and with appropriate rites induct it into the Constitution, for the express purpose of restricting a nonentity!--to take from the law-making power what it *never had*, and what *cannot* pertain to it! The legislatures of those States have no power to abolish slavery, simply because their Constitutions have expressly *taken away* that power. The people of Arkansas, Mississippi, &c., well knew the competency of the law-making power to abolish slavery, and hence their zeal to *restrict* it. The fact that these and other States have inhibited their legislatures from the exercise of this power, shows that the abolition of slavery is acknowledged to be a proper subject of legislation, when Constitutions impose no restrictions.

The slaveholding States have recognised this power in their *laws*. The Virginia Legislature passed a law in 1786 to prevent the further importation of Slaves, of which the following is an extract: "And be it further enacted that every slave imported into this commonwealth contrary to the true intent and meaning of this act, shall upon such importation become *free*." By a law of Virginia, passed Dec. 17, 1792, a slave brought into the state and kept *there a year*, was *free*. The Maryland Court of Appeals at the December term 1813 (see case of Stewart *vs.* Oakes,) decided that a slave owned in Maryland, and sent by his master into Virginia to work at different periods, making one year in the whole, became *free*, being *emancipated* by the law of Virginia quoted above. North Carolina and Georgia in their acts of cession, transferring to the United States the territory now constituting the States of Tennessee, Alabama and Mississippi, made it a condition of the grant, that the provisions of the ordinance of '87, should be secured to the inhabitants *with the exception of the sixth article which prohibits slavery*; thus conceding, both the competency of law to abolish slavery, and the power of Congress to do it, within its jurisdiction. Besides, these acts show the prevalent belief at that time, in the slaveholding States, that the general government had adopted a line of policy aiming at the exclusion of slavery from the entire territory of the United States, not included within the original States, and that this policy would be pursued unless prevented by specific and formal stipulation.

Slaveholding states have asserted this power *in their judicial decisions*. In numerous cases their highest courts have decided that if the legal owner of slaves takes them into those States where slavery has been abolished either by law or by the constitution, such removal eman-

cipates them, such law or constitution abolishing their slavery. This principle is asserted in the decision of the Supreme Court of Louisiana, in the case of Lunsford *vs.* Coquillon, 14 Martin's La. Reps. 401. Also by the Supreme Court of Virginia, in the case of Hunter *vs.* Fulcher, 1 Leigh's Reps. 172. The same doctrine was laid down by Judge Washington, of the United States Supreme Court, in the case of Butler *vs.* Hopper, Washington's Circuit Court Reps. 508. This principle was also decided by the Court of Appeals in Kentucky; case of Rankin *vs.* Lydia, 2 Marshall's Reps. 407; see also, Wilson *vs.* Isbell, 5 Call's Reps. 425, Spotts *vs.* Gillespie, 6 Randolph's Reps. 566. The State *vs.* Lasselle, 1 Blackford's Reps. 60, Marie Louise *vs.* Mariot, 8 La. Reps. 475. In this case, which was tried in 1836, the slave had been taken by her master to France and brought back; Judge Mathews, of the Supreme Court of Louisiana, decided that "residence for one moment" under the laws of France emancipated her.

6. *Eminent statesmen, themselves slaveholders, have conceded this power.* Washington, in a letter to Robert Morris, dated April 12, 1786, says: "There is not a man living, who wishes more sincerely than I do, to see a plan adopted for the abolition of slavery; but there is only one proper and effectual mode by which it can be accomplished, and that is by *legislative* authority." In a letter to Lafayette, dated May 10, 1786, he says: It (the abolition of slavery) certainly might, and assuredly ought to be effected, and that too by *legislative* authority." In a letter to John Fenton Mercer, dated Sept. 9, 1786, he says: "It is among my first wishes to see some plan adopted by which slavery in this country may be abolished by *law*." In a letter to Sir John Sinclair, he says: "There are in Pennsylvania, *laws* for the gradual abolition of slavery, which neither Maryland nor Virginia have at present, but which nothing is more certain than that they *must have*, and at a period not remote." Speaking of movements in the Virginia Legislature in 1777, for the passage of a law emancipating the slaves, Mr. Jefferson says: "The principles of the amendment were agreed on, that is to say, the freedom of all born after a certain day; but it was found that the public mind would not bear the proposition, yet the day is not far distant, when *it must bear and adopt it.*"—Jefferson's Memoirs, v. 1, p. 35. It is well known that Jefferson, Pendleton, Mason, Wythe and Lee, while acting as a committee of the Virginia House of Delegates to revise the State Laws, prepared a plan for the gradual emancipation of the slaves by law. These men were the great lights of Virginia. Mason, the author of the Virginia Constitution; Pendleton, the President of the memorable Virginia Convention in 1787, and President of the Virginia Court of Appeals; Wythe was the Blackstone of the Virginia bench, for a quarter of a century Chancellor of the State, the professor of law in the University of William and Mary, and the preceptor of Jefferson, Madison, and Chief Justice Marshall. He was author of the celebrated remonstrance to the English House of Commons on the subject of the stamp act. As to Jefferson, his *name* is his biography.

Every slaveholding member of Congress from the States of Maryland, Virginia, North and South Carolina, and Georgia, voted for the celebrated ordinance of 1787, which *abolished* the slavery then existing in the Northwest Territory. Patrick Henry, in his well known letter to Robert Pleasants, of Virginia, January 18, 1773, says: "I believe a time will come when an opportunity will be offered to *abolish* this lamentable evil." William Pinkney, of Maryland, advocated the abolition of slavery by law, in the legislature of that State, in 1789. Luther Martin urged the same measure both in the Federal Convention, and in his report to the Legislature of Maryland. In 1796, St. George Tucker, professor of law in the University of William and Mary, and Judge of the General Court, published an elaborate dissertation on slavery, addressed to the General Assembly of the State, and urging upon them the abolition of slavery by *law*.

John Jay, while New-York was yet a slave State, and himself in law a slaveholder, said in a letter from Spain, in 1786, "An excellent law might be made out of the Pennsylvania one, for the gradual abolition of slavery. Were I in your legislature, I would present a bill for the purpose, drawn up with great care, and I would never cease moving it till it became a law, or I ceased to be a member."

Daniel D. Tompkins, in a message to the Legislature of New-York, January 8, 1812, said: "To devise the means for the gradual and ultimate *extermination* from amongst us of slavery, is a work worthy the representatives of a polished and enlightened nation."

The Virginia Legislature asserted this power in 1832. At the close of a month's debate, the following proceedings were had. I extract from an editorial article of the Richmond Whig, of January 26, 1832.

"The report of the Select Committee, adverse to legislation on the subject of Abolition, was in these words: *Resolved*, as the opinion of this Committee, that it is INEXPEDIENT FOR THE PRESENT, to make any legislative enactments for the abolition of Slavery." This Report Mr. Preston moved to reverse, and thus to declare that it *was* expedient, *now* to make Legislative enactments for the abolition of slavery. This was meeting the question in its strongest form. It demanded action, and immediate action. On this proposition the vote was 58 to 73. Many of the most decided friends of abolition voted against the amendment; because they thought public opinion not sufficiently prepared for it, and that it might prejudice the cause to move too rapidly. The vote on Mr. Witcher's motion to postpone the whole subject indefinitely, indicates the true state of opinion in the House. —That was the test question, and was so intended and proclaimed by its mover. That motion was *negatived*, 71 to 60; showing a majority of 11, who by that vote, declared their belief that at the proper time, and in the proper mode, Virginia ought to commence a system of gradual abolition."

8. *The Congress of the United States have asserted this power.* The ordinance of '87, declaring that there should be "neither slavery

nor involuntary servitude," in the North Western territory, abolished the slavery then existing there. The Supreme Court of Mississippi, in its decision in the case of Harvey *vs.* Decker, Walker's Mi. Reps. 36, declared that the ordinance emancipated the slaves then held there. In this decision the question is argued ably and at great length. The Supreme Court of Louisiana made the same decision in the case of Forsyth *vs.* Nash, 4 Martin's La. Reps. 385, The same doctrine was laid down by Judge Porter, (late United States Senator from Louisiana,) in his decision at the March term of the La. Supreme Court, 1830, in the case of Merry *vs.* Chaxnaider, 20 Martin's Reps. 699.

That the ordinance abolished the slavery then existing, is also shown by the fact, that persons holding slaves in the territory petitioned for the repeal of the article abolishing slavery, assigning *that* as a reason. "The petition of the citizens of Randolph and St. Clair counties in the Illinois country, stating that they were in possession of slaves, and praying the repeal of that act (the 6th article of the ordinance of '87) and the passage of a law legalizing slavery there." [Am. State papers, Public Lands, v. 1. p. 69,] Congress passed this ordinance before the United States Constitution was adopted, when it derived all its authority from the articles of Confederation, which conferred powers of legislation far more restricted than those conferred on Congress over the District and Territories by the United States Constitution. Now, we ask, how does the Constitution *abridge* the powers which Congress possessed under the articles of confederation?

The abolition of the slave trade by Congress, in 1808, is another illustration of the competency of legislative power to abolish slavery. The African slave trade has become such a mere *technic*, in common parlance, that the fact of its being *proper slavery* is overlooked. The buying and selling, the transportation, and the horrors of the middle passage, were mere *incidents* of the slavery in which the victims were held. Let things be called by their own names. When Congress abolished the African slave trade, it abolished SLAVERY—supreme slavery—power frantic with license, trampling a whole hemisphere scathed with its fires, and running down with blood. True, Congress did not, in the abolition of the slave trade, abolish *all* the slavery within its jurisdiction, but it did abolish all the slavery in *one part* of its jurisdiction. What has rifled it of power to abolish slavery in *another* part of its jurisdiction, especially in that part where it has "exclusive legislation in all cases whatsoever?"

9. *The Constitution of the United States recognises this power by the most conclusive implication.* In Art. 1, sec. 3, clause 1, it prohibits the abolition of the slave trade previous to 1808: thus implying the power of Congress to do it at once, but for the restriction; and its power to do it *unconditionally*, when that restriction ceased. Again: In Art. 4, sec. 2, "No person held to service or labor in one state under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from said service or labor."

This clause was inserted, as all admit, to prevent the runaway slave from being emancipated by the *laws* of the free states. If these laws had *no power* to emancipate, why this constitutional guard to prevent it?

The insertion of the clause, was the testimony of the eminent jurists that framed the Constitution, to the existence of the *power*, and their public proclamation, that the abolition of slavery was within the appropriate sphere of legislation. The right of the owner to that which is rightfully property, is founded on a principle of *universal law*, and is recognised and protected by all civilized nations; property in slaves is, by general consent, an *exception*; hence slaveholders insisted upon the insertion of this clause in the United States Constitution, that they might secure by an *express provision*, that from which protection is withheld, by the acknowledged principles of universal law.* By demanding this provision, slaveholders consented that their slaves should not be recognised as property by the United States Constitution, and hence they found their claim, on the fact of their being "*persons*, and *held* to service."

But waiving all concessions, whether of constitutions, laws, judicial decisions, or common consent, I take the position that the power of Congress to abolish slavery in the District, follows from the fact, that as the sole legislature there, it has unquestionable power *to adopt the Common Law, as the legal system within its exclusive jurisdiction.* This has been done, with certain restrictions, in most of the States, either by legislative acts or by constitutional implication. THE COMMON LAW KNOWS NO SLAVES. Its principles annihilate slavery wherever they touch it. It is a universal, unconditional, abolition act. Wherever slavery is a legal system, it is so only by *statute* law, and in violation of common law. The declaration of Lord Chief Justice Holt, that "by the common law, no man can have property in another," is an acknowledged axiom, and based upon the well known common law definition of property. "The subjects of dominion or property are *things*, as contra-distinguished from *persons*." Let Congress adopt the common law in the District of Columbia, and slavery there is at once abolished. Congress may well be at home

* The fact, that under the articles of Confederation, slaveholders, whose slaves had escaped into free states, had no legal power to force them back,—that *now* they have no power to recover, by process of law, their slaves who escape to Canada, the South American States, or to Europe—the case already cited in which the Supreme Court of Louisiana decided, that residence "*for one moment*," under the laws of France emancipated an American slave—the case of Fulton, *vs.* Lewis, 3 Har. and John's Reps., 56, where the slave of a St. Domingo slaveholder, who brought him to Maryland in '93, was pronounced free by the Maryland Court of Appeals—these, with other facts and cases "too numerous to mention," are illustrations of the acknowledged truth here asserted, that by the consent of the civilized world, and on the principles of universal law, slaves are not "*property*," but *self-proprietors*, and that whenever held as property under *law*, it is only by *positive legislative acts*, forcibly setting aside the law of nature, the common law, and the principles of universal justice and right between man and man,—principles paramount to all law, and from which alone law derives its intrinsic authoritative sanction.

in common law legislation, for the common law is the grand element of the United States Constitution. All its *fundamental* provisions are instinct with its spirit; and its existence, principles and paramount authority, are presupposed and assumed throughout the whole. The preamble of the Constitution plants the standard of the Common Law immovably in its foreground. "We, the people of the United States, in order to ESTABLISH JUSTICE, &c., do ordain and establish this Constitution;" thus proclaiming *devotion to justice*, as the controlling motive in the organization of the Government, and its secure establishment the chief object of its aims. By this most solemn recognition, the common law, that grand legal embodyment of "*justice*" and fundamental right was made the groundwork of the Constitution, and intrenched behind its strongest munitions. The second clause of Sec. 9, Art. 1; Sec. 4, Art. 2, and the last clause of Sec. 2, Art. 3, with Articles 7, 8, 9, and 13 of the Amendments, are also express recognitions of the common law as the presiding Genius of the Constitution.

By adopting the common law within its exclusive jurisdiction Congress would carry out the principles of our glorious Declaration, and follow the highest precedents in our national history and jurisprudence. It is a political maxim as old as civil legislation, that laws should be strictly homogeneous with the principles of the government whose will they express, embodying and carrying them out—being indeed the *principles themselves*, in preceptive form—representatives alike of the nature and the power of the Government—standing illustrations of its genius and spirit, while they proclaim and enforce its authority. Who needs be told that slavery is in antagonism to the principles of the Declaration, and the spirit of the Constitution, and that these and the principles of the common law gravitate toward each other with irrepressible affinities, and mingle into one? The common law came hither with our pilgrim fathers; it was their birthright, their panoply, their glory, and their song of rejoicing in the house of their pilgrimage. It covered them in the day of their calamity, and their trust was under the shadow of its wings. From the first settlement of the country, the genius of our institutions and our national spirit have claimed it as a common possession, and exulted in it with a common pride. A century ago, Governor Pownall, one of the most eminent constitutional jurists of colonial times, said of the common law, "In all the colonies the common law, is received as the foundation and main body of their law." In the Declaration of Rights, made by the Continental Congress at its first session in '74, there was the following resolution: "Resolved, That the respective colonies are entitled to the common law of England, and especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of that law." Soon after the organization of the general government, Chief Justice Ellsworth, in one of his decisions on the bench of the United States Supreme Court, said: "The common law of this country remains the same as it was before the revolution." Chief Justice Marshall, in his decision in the case of Livingston *vs.* Jefferson,

said: "When our ancestors migrated to America, they brought with them the common law of their native country, so far as it was applicable to their new situation and I do not conceive that the revolution in any degree changed the relations of man to man, or the law which regulates them. In breaking our political connection with the parent state, we did not break our connection with each other." [*See Hall's Law Journal, new series.*] Mr. Duponceau, in his "Dissertation on the Jurisdiction of Courts in the United States," says, "I consider the common law of England the *jus commune* of the United States. I think I can lay it down as a correct principle, that the common law of England, as it was at the time of the declaration of Independence, still continues to be the national law of this country, so far as it is applicable to our present state, and subject to the modifications it has received here in the course of nearly half a century. Chief Justice Taylor of North Carolina, in his decision in the case of the State *vs.* Reed, in 1823, Hawkes' N. C. Reps. 454, says, "a law of *paramount obligation to the statute* was violated by the offence—COMMON LAW, founded upon the law of nature, and confirmed by revelation." The legislation of the United States abounds in recognitions of the principles of the common law, asserting their paramount binding power. Sparing details, of which our national state papers are full, we illustrate by a single instance. It was made a condition of the admission of Louisiana into the Union, that the right of trial by jury should be secured to all her citizens,—the United States government thus employing its power to enlarge the jurisdiction of the common law in this its great representative.

Having shown that the abolition of slavery is within the competency of the law-making power, when unrestricted by constitutional provisions, and that the legislation of Congress over the District is thus unrestricted, its power to abolish slavery there is established.

Besides this general ground, the power of Congress to abolish slavery in the District may be based upon another equally tenable. We argue it from the fact, that slavery exists there *now* by an act of Congress. In the act of 16th July, 1790, Congress accepted portions of territory offered by the states of Maryland and Virginia, and enacted that the laws, as they then were, should continue in force, "until Congress shall otherwise by law provide;" thus making the slave codes of Maryland and Virginia its own. Under these laws, adopted by Congress, and in effect re-enacted and made laws of the District, the slaves there are now held.

Is Congress so impotent in its own "exclusive jurisdiction" that it *cannot* "otherwise by law provide?" If it can say, what *shall* be considered property, it can say what shall *not* be considered property. Suppose a legislature enacts, that marriage contracts shall be mere bills of sale, making a husband the proprietor of his wife, as his *bona fide* property; and suppose husbands should herd their wives in droves for the market as beasts of burden, or for the brothel as victims of lust, and then prate about their inviolable legal property, and deny

the power of the legislature, which stamped them property, to undo its own wrong, and secure to wives by law the rights of human beings. Would such cant about "legal rights" be heeded where reason and justice held sway, and where law, based upon fundamental morality, received homage? If a frantic legislature pronounces woman a chattel, has it no power, with returning reason, to take back the blasphemy? Is the impious edict irrepealable? Be it, that with legal forms it has stamped wives "wares." Can no legislation blot out the brand? Must the handwriting of Deity on human nature be expunged for ever? Has law no power to stay the erasing pen, and tear off the scrawled label that covers up the IMAGE OF GOD? We now proceed to show that

THE POWER OF CONGRESS TO ABOLISH SLAVERY IN THE DISTRICT HAS BEEN, TILL RECENTLY, UNIVERSALLY CONCEDED.

1. It has been assumed by Congress itself. The following record stands on the journals of the House of Representatives for 1804, p. 225: "On motion made and seconded that the House do come to the following resolution: 'Resolved, That from and after the 4th day of July, 1805, all blacks and people of color that shall be born within the District of Columbia, or whose mothers shall be the property of any person residing within said District, shall be free, the males at the age of —, and the females at the age of —. The main question being taken that the House do agree to said motion as originally proposed, it was negatived by a majority of 46.'" Though the motion was lost, it was on the ground of its alleged *inexpediency* alone, and not because Congress lacked the constitutional power. In the debate which preceded the vote, the *power* of Congress was conceded. In March, 1816, the House of Representatives passed the following resolution:—"Resolved, That a committee be appointed to inquire into the existence of an inhuman and illegal traffic in slaves, carried on in and through the District of Columbia, and to report whether any and what measures are necessary for *putting a stop to the same.*"

On the 9th of January, 1829, the House of Representatives passed the following resolution by a vote of 114 to 66: "Resolved, That the Committee on the District of Columbia be instructed to inquire into the *expediency* of providing by *law* for the gradual abolition of slavery within the District, in such manner that the interests of no individual shall be injured thereby." Among those who voted in the affirmative were Messrs. Barney of Md., Armstrong of Va., A. H. Shepperd of N. C., Blair of Tenn., Chilton and Lyon of Ky., Johns of Delaware, and others from slave states.

2. It has been conceded directly, or impliedly, by all the committees on the District of Columbia that have reported on the subject. In a report of the committee on the District, Jan. 11, 1837, by their chairman, Mr. Powell of Virginia, there is the following declaration: "The Congress of the United States, has by the constitution exclusive jurisdiction over the District, and has power upon this subject, (*slavery*)

as upon all other subjects of legislation, to exercise *unlimited discretion.*" Reps. of Comms. 2d Session, 19th Cong. v. I. No. 43. In February, 1829, the committee on the District, Mr. Alexander of Virginia, Chairman, in their report pursuant to Mr. Miner's resolutions, recognize a contingent abolition proceeding upon the consent of the people. In December, 1831, the committee on the District, Mr. Doddridge of Virginia, Chairman, reported, "That until the adjoining states act on the subject (slavery) it would be (not *unconstitutional* but) unwise and impolitic, if not unjust, for Congress to interfere." In April, 1836, a special committee on abolition memorials reported the following resolutions by their Chairman, Mr. Pinckney of South Carolina: "Resolved, That Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the states of this confederacy."

"Resolved, That Congress *ought not to interfere* in any way with slavery in the District of Columbia." "Ought not to interfere," carefully avoiding the phraseology of the first resolution, and thus in effect conceding the constitutional power. In a widely circulated "Address to the electors of the Charleston District," Mr. Pinckney is thus denounced by his own constituents: "He has proposed a resolution which is received by the plain common sense of the whole country as a concession that Congress has authority to abolish slavery in the District of Columbia."

3. It has been conceded by the *citizens of the District.* A petition for the gradual abolition of slavery in the District, signed by nearly eleven hundred of its citizens, was presented to Congress, March 24, 1837. Among the signers to this petition, were Chief Justice Cranch, Judge Van Ness, Judge Morsel, Prof. J. M. Staughton, Rev. Dr. Balch, Rev. Dr. Keith, John M. Munroe, and a large number of the most influential inhabitants of the District. Mr. Dickson, of New York, asserted on the floor of Congress in 1835, that the signers of this petition owned more than half of the property in the District. The accuracy of this statement has never been questioned.

This power has been conceded by *grand juries of the District.* The grand jury of the county of Alexandria, at the March term 1802, presented the domestic slave trade as a grievance, and said, "We consider these grievances demanding *legislative* redress." Jan. 19, 1829, Mr. Alexander, of Virginia, presented a representation of the grand jury in the city of Washington, remonstrating against "any measure for the abolition of slavery within said District, unless accompanied by measures for the removal of the emancipated from the same;" thus, not only conceding the power to emancipate slaves, but affirming an additional power, that of *excluding them when free.* See Journal H. R. 1828-9, p. 174.

4. This power has been conceded *by State Legislatures.* In 1828 the Legislature of Pennsylvania instructed their Senators in Congress "to procure, if practicable, the passage of a law to abolish slavery in the District of Columbia." Jan. 28, 1829, the House of Assembly

of New York passed a resolution, that their "Senators in Congress be instructed to make every possible exertion to effect the passage of a law for the abolition of Slavery in the District of Columbia." In February, 1837, the Senate of Massachusetts "Resolved, That Congress having exclusive legislation in the District of Columbia, possess the right to abolish slavery and the slave trade therein, and that the early exercise of such right is demanded by the enlightened sentiment of the civilized world, by the principles of the revolution, and by humanity." The House of Representatives passed the following resolution at the same session: "Resolved, That Congress having exclusive legislation in the District of Columbia, possess the right to abolish slavery in said District, and that its exercise should only be restrained by a regard to the public good."

November 1, 1837, the Legislature of Vermont, Resolved, that Congress have the full power by the constitution to abolish slavery and the slave trade in the District of Columbia, and in the territories." The Legislature of Vermont passed in substance the same resolution, at its session in 1836.

May 30, 1836, a committee of the Pennsylvania Legislature reported the following resolution: "Resolved, That Congress does possess the constitutional power, and it is expedient to abolish slavery and the slave trade within the District of Columbia."

In January, 1836, the Legislature of South Carolina "Resolved, That we should consider the abolition of slavery in the District of Columbia as a violation of the rights of the citizens of that District derived from the *implied* conditions on which that territory was ceded to the General Government." Instead of denying the constitutional power, they virtually admit its existence, by striving to smother it under an *implication*. In February, 1836, the Legislature of North Carolina "Resolved, That, although by the Constitution all legislative power over the District of Columbia is vested in the Congress of the United States, yet we would deprecate any legislative action on the part of that body towards liberating the slaves of that District, as a breach of faith towards those States by whom the territory was originally ceded, and will regard such interference as the first step towards a general emancipation of the slaves of the South." Here is a full concession of the *power*. February 2, 1836, the Virginia Legislature passed unanimously the following resolution: "Resolved, by the General Assembly of Virginia, that the following article be proposed to the several states of this Union, and to Congress, as an amendment of the Constitution of the United States: 'The powers of Congress shall not be so construed as to authorize the passage of any law for the emancipation of slaves in the District of Columbia, without the consent of the individual proprietors thereof, unless by the sanction of the Legislatures of Virginia and Maryland, and under such conditions as they shall by law prescribe.'"

Fifty years after the formation of the United States constitution the states are solemnly called upon by the Virginia Legislature, to amend

that instrument by a clause asserting that, in the grant to Congress of "exclusive legislation in all cases whatsoever" over the District, the "case" of slavery is not included!! What could have dictated such a resolution but the conviction that the power to abolish slavery is an irresistible interference from the constitution *as it is*. The fact that the same legislature passed afterward a resolution, though by no means unanimously, that Congress does not possess the power, abates not a tittle of the testimony in the first resolution. March 23d, 1824, "Mr. Brown presented the resolutions of the General Assembly of Ohio, recommending to Congress the consideration of a system for the gradual emancipation of persons of color held in servitude in the United States." On the same day, "Mr. Noble, of Indiana, communicated a resolution from the legislature of that state, respecting the gradual emancipation of slaves within the United States." Journal of the United States Senate, for 1824–5, p. 231.

The Ohio and Indiana resolutions, by taking for granted the *general* power of Congress over the subject of slavery, do virtually assert its *special* power within its *exclusive* jurisdiction.

5. The power of Congress to abolish slavery in the District, has been conceded by bodies of citizens in the slave states. The petition of eleven hundred citizens of the District of Columbia, in 1827, has been already mentioned. "March 5, 1830, Mr. Washington presented a memorial of inhabitants of the county of Frederick, in the state of Maryland, praying that provision may be made for the gradual abolition of slavery in the District of Columbia." Journal H. R. 1829—30, p. 358.

March 30, 1828. Mr. A. H. Shepperd, of North Carolina, presented a memorial of citizens of that state, "praying Congress to take measures for the entire abolition of slavery in the District of Columbia." Journal H. R. 1829—30, p. 379.

January 14, 1822. Mr. Rhea, of Tennessee, presented a memorial of citizens of that state, praying "that provision may be made, whereby all slaves which may hereafter be born in the District of Columbia, shall be free at a certain period of their lives." Journal H. R. 1821—22, p. 142.

December 13, 1824. Mr. Saunders of North Carolina, presented a memorial of citizens of that state, praying "that measures may be taken for the gradual abolition of slavery in the United States. Journal H. R. 1824—25, p. 27.

December 16, 1828. "Mr. Barnard presented the memorial of the American Convention for promoting the abolition of slavery, held in Baltimore, praying that slavery may be abolished in the District of Columbia." Journal U. S. Senate, 1828—29, p. 24.

6. Distinguished statesmen and jurists in the slaveholding states, have conceded the power of Congress to abolish slavery in the District. The testimony of Messrs. Doddridge, Powell, and Alexander, of Virginia, Chief Justice Cranch, and Judges Morsell and Van Ness, of the District, has already been given. In the debate in Congress on the

memorial of the Society of Friends, in 1790, Mr. Madison, in speaking of the territories of the United States, explicitly declared, from his own knowledge of the views of the members of the convention that framed the constitution, as well as from the obvious import of its terms, that in the territories "Congress have certainly the power to regulate the subject of slavery." Congress can have no more power over the territories than that of "exclusive legislation in all cases whatsoever," consequently, according to Mr. Madison, "it has certainly the power to regulate the subject of slavery in the" *District.* In March, 1816, John Randolph introduced a resolution for putting a stop to the domestic slave trade within the District. December 12, 1827, Mr. Barney, of Maryland, presented a memorial for abolition in the District, and moved that it be printed. Mr. McDuffie, of South Carolina, objected to the printing, but "expressly admitted the right of Congress to grant to the people of the District any measures which they might deem necessary to free themselves from the deplorable evil."—(See letter of Mr. Claiborne, of Mississippi, to his constituents, published in the Washington Globe, May 9, 1836.) The sentiments of Henry Clay on the subject are well known. In a speech before the U. S. Senate, in 1836, he declared the power of Congress to abolish slavery in the District "unquestionable." Messrs. Blair, of Tennessee, Chilton, Lyon, and Richard M. Johnson, of Kentucky, A. H. Shepperd, of North Carolina, Messrs. Armstrong and Smyth, of Virginia, Messrs. Dorsey, Archer, and Barney, of Maryland, and Johns, of Delaware, with numerous others from slave states, have asserted the power of Congress to abolish slavery in the District. In the speech of Mr. Smyth, of Virginia, on the Missouri question, January 28, 1820, he says on this point: "If the future freedom of the blacks is your real object, and not a mere pretence, why do you not begin *here?* Within the ten miles square, you have *undoubted power* to exercise exclusive legislation. *Produce a bill to emancipate the slaves in the District of Columbia*, or, if you prefer it, to emancipate those born hereafter."

To this may be added the testimony of the present Vice President of the United States, Hon. Richard M. Johnson, of Kentucky. In a speech before the United States' Senate, February 1, 1820, (National Intelligencer, April 29, 1820,) he says: "Congress has the express power stipulated by the Constitution, to exercise exclusive legislation over this Distsict of ten miles square. Here slavery is sanctioned by law. In the District of Columbia, containing a population of 30,000 souls, and probably as many slaves as the whole territory of Missouri, THE POWER OF PROVIDING FOR THEIR EMANCIPATION RESTS WITH CONGRESS ALONE. Why, then, let me ask, Mr. President, why all this sensibility—this commiseration—this heart-rending sympathy for the slaves of Missouri, and this cold insensibility, this eternal apathy, towards the slaves in the District of Columbia?"

It is quite unnecessary to add, that the most distinguished northern statesmen of both political parties, have always affirmed the power of Congress to abolish slavery in the District. President Van Buren in his letter of March 6, 1836, to a committee of gentlemen in North

Carolina, says, "I would not, from the light now before me, feel myself safe in pronouncing that Congress does not possess the power of abolishing slavery in the District of Columbia." This declaration of the President is consistent with his avowed sentiments touching the Missouri question, on which he coincided with such men as Daniel D. Tompkins, De Witt Clinton, and others, whose names are a host.* It is consistent also, with his recommendation in his late message on the 5th of last month, in which, speaking of the District, he strongly urges upon Congress "a thorough and careful revision of its local government," speaks of the "entire dependence" of the people of the District "upon Congress," recommends that a "uniform system of local government" be adopted, and adds, that "although it was selected as the seat of the General Government, the site of its public edifices, the depository of its archives, and the residence of officers intrusted with large amounts of public property, and the management of public business, yet it never has been subjected to, or received, that *special* and *comprehensive* legislation which these circumstances peculiarly demanded."

The tenor of Senator Tallmadge's speech on the right of petition, in the last Congress, and of Mr. Webster's on the reception of abolition memorials, may be taken as universal exponents of the sentiments of northern statesmen as to the power of Congress to abolish slavery in the District of Columbia,

After presenting this array of evidence, *direct testimony* to show that the power of Congress to abolish slavery in the District, has always till recently been *universally conceded*, is perhaps quite superfluous. We subjoin, however, the following:

The Vice-President of the United States in his speech on the Missouri question, quoted above, after contending that the restriction of slavery in Missouri would be unconstitutional, adds, "But I am at a loss to conceive why gentlemen should arouse all their sympathies upon this occasion, when they permit them to lie dormant upon the same subject, in relation to other sections of country, in which THEIR POWER COULD NOT BE QUESTIONED." Then follows immediately the assertion of congressional power to abolish slavery in the District, as

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* Mr. Van Buren, when a member of the Senate of New-York, voted for the following preamble and resolutions, which passed unanimously:—Jan. 28th, 1820. "Whereas, the inhibiting the further extension of slavery in the United States, is a subject of deep concern to the people of this state: and whereas, we consider slavery as an evil much to be deplored, and that *every constitutional barrier should be interposed to prevent its further extension:* and that the constitution of the United States *clearly gives congress the right* to require new states, not comprised within the original boundary of the United States, to *make the prohibition of slavery* a condition of their admission into the Union: Therefore,

Resolved, That our Senators be instructed, and our members of Congress be requested, to oppose the admission as a state into the Union, of any territory not comprised as aforesaid, without making *the prohibition of slavery* therein an indispensable condition of admission.

already quoted. In the speech of Mr. Smyth, of Va., also quoted above, he declares the power of Congress to abolish slavery in the District to be "UNDOUBTED."

Mr. Sutherland, of Pennsylvania, in a speech in the House of Representatives, on the motion to print Mr. Pinckney's Report, is thus reported in the Washington Globe, of May 9th, '36. "He replied to the remark that the report conceded that Congress had a right to legislate upon the subject in the District of Columbia, and said that SUCH A RIGHT HAD NEVER BEEN, TILL RECENTLY, DENIED."

The American Quarterly Review, published at Philadelphia, with a large circulation and list of contributors in the slave states, holds the following language in the September No. 1833, p. 55: "Under this 'exclusive jurisdiction,' granted by the constitution, Congress has power to abolish slavery and the slave trade in the District of Columbia. It would hardly be necessary to state this as a distinct proposition, had it not been occasionally questioned. The truth of the assertion, however, is too obvious to admit of argument—and we believe HAS NEVER BEEN DISPUTED BY PERSONS WHO ARE FAMILIAR WITH THE CONSTITUTION."

Finally—an explicit, and unexpected admission, that an "*overwhelming majority*" of the *present* Congress concede the power to abolish slavery in the District, has just been made by a member of Congress from South Carolina, in a letter published in the Charleston Mercury of Dec. 27, well known as the mouth-piece of Mr. Calhoun. The following is an extract:

"The time has arrived when we must have new guarantees under the constitution, or the Union must be dissolved. *Our views of the constitution are not those of the majority. An overwhelming majority think that by the constitution, Congress may abolish slavery in the District of Columbia—may abolish the slave trade between the States; that is, it may prohibit their being carried out of the State in which they are —and prohibit it in all the territories, Florida among them. They think,* NOT WITHOUT STRONG REASONS, *that the power of Congress extends to all of these subjects.*"

In another letter, the same correspondent says:

"*The fact is, it is vain to attempt,* AS THE CONSTITUTION IS NOW, *to keep the question of slavery out of the Halls of Congress,*—until, by some decisive action, WE COMPEL SILENCE, *or alter the constitution,* agitation and insult is our eternal fate in the confederacy."

OBJECTIONS TO THE FOREGOING CONCLUSIONS CONSIDERED.

We now proceed to notice briefly the main arguments that have been employed in Congress and elsewhere against the power of Congress to abolish slavery in the District. One of the most plausible, is that "the conditions on which Maryland and Virginia ceded the District to the United States, would be violated, if Congress should abolish slavery there." The reply to this is, that Congress had no power to

accept a cession coupled with conditions restricting the power given it by the constitution. Nothing short of a convention of the states, and an alteration of the constitution, abridging its grant of power, could have empowered Congress to accept a territory on any other conditions than that of exercising "exclusive legislation, in all cases whatsoever," over it.

To show the futility of the objection, here follow the acts of cession. The cession of Maryland was made in November, 1788, and is as follows: "An act to cede to Congress a district of ten miles square in this state for the seat of the government of the United States."

"Be it enacted, by the General Assembly of Maryland, that the representatives of this state in the House of Representatives of the Congress of the United States, appointed to assemble at New-York, on the first Wednesday of March next, be, and they are hereby authorized and required on the behalf of this state, to cede to the Congress of the United States, any district in this state, not exceeding ten miles square, which the Congress may fix upon, and accept for the seat of government of the United States." Laws of Maryland, vol. 2, chap. 46.

The cession from Virginia was made by act of the Legislature of that State on the 3d of December, 1788, in the following words:

"Be it enacted by the General Assembly, That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of the State, and in any part thereof, as Congress may, by law, direct, shall be, and the same is hereby for ever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil, as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the government of the constitution of the United States."

But were there no provisos to these acts? The Maryland act had *none*. That part of the District therefore, which includes the cities of Washington and Georgetown, can lay claim to nothing with which to ward off the power of Congress. The Virginia act had this proviso: "Sect. 2. Provided, that nothing herein contained, shall be construed to vest in the United States any right of property in the *soil*, or to affect the rights of individuals *therein*, otherwise than the same shall or may be transferred by such individuals to the United States."

This specification touching the soil was merely definitive and explanatory of that clause in the act of cession, "*full and absolute right.*" Instead of restraining the power of Congress on *slavery* and other subjects, it even gives it wider scope; for exceptions to *parts* of a rule, give double confirmation to those parts not embraced in the exceptions. If it was the *design* of the proviso to restrict congressional action on the subject of *slavery*, why is the *soil alone* specified? As legal instruments are not paragons of economy in words, might not "John Doe," out of his abundance, and without spoiling his style, have afforded an additional word—at least a hint—that slavery was

meant, though nothing was *said* about it? The subject must have been too "delicate," even for the most distant allusion! The mystery of silence is solved!!

But again, Maryland and Virginia, in their acts of cession, declare them to be "in pursuance of" that clause of the constitution which gives to Congress "exclusive legislation in all cases whatsoever over" the ten miles square—thus, instead of *restricting* that clause, both States gave an express and decided confirmation of it. Now, their acts of cession either accorded with that clause of the constitution, or they conflicted with it. If they conflicted with it, *accepting* the cessions was a violation of the constitution. If they accorded, the objector has already had his answer. The fact that Congress accepted the cessions, proves that in its view their *terms* did not conflict with the constitutional grant of "power to exercise exclusive legislation in all cases whatsoever over such District." The inquiry whether these acts of cession were consistent or inconsistent with the United States constitution, is totally irrelevant to the question at issue. What saith the CONSTITUTION? That is the question. Not, what saith Virginia, or Maryland, or—equally to the point—John Bull! If Maryland and Virginia had been the authorized interpreters of the constitution for the Union, these acts of cession could hardly have been magnified more than they were by Messrs. Garland and Wise in the last Congress. A true understanding of the constitution can be had, forsooth, only by holding it up in the light of Maryland and Virginia legislation!

We are told, again, that those States would not have ceded the District if they had supposed the constitution gave Congress power to abolish slavery in it.

This comes with an ill grace from Maryland and Virginia. They *knew* the constitution. They were parties to it. They had sifted it, clause by clause, in their State conventions. They had weighed its words in the balance—they had tested them as by fire; and finally, after long pondering, they *adopted* the constitution. And *afterward*, self-moved, they ceded the ten miles square, and declared the cession made "in pursuance of" that oft-cited clause, "Congress shall have power to exercise exclusive legislation in all cases whatsoever over such District," &c. And now verily "they would not have ceded if they had *supposed!*" &c. Cede it they *did*, and "in full and absolute right both of soil and persons." Congress accepted the cession—state power over the District ceased, and congressional power over it commenced—and now, the sole question to be settled is, *the amount of power over the District, lodged in Congress by the constitution.* The constitution—the CONSTITUTION—that is the point. Maryland and Virginia "suppositions" must be potent suppositions, to abrogate a clause in the United States Constitution! That clause either gives Congress power to abolish slavery in the District, or it does *not*—and that point is to be settled, not by state "suppositions," nor state usages, nor state legislation, but *by the terms of the clause themselves.*

Southern members of Congress, in the recent discussions, have conceded the power of a contingent abolition in the District, by suspending it upon the consent of the people. Such a doctrine from *declaimers* like Messrs. Alford, of Georgia, and Walker, of Mississippi, would excite no surprise; but that it should be honored with the endorsement of such men as Mr. Rives and Mr. Calhoun, is quite unaccountable. Are attributes of *sovereignty* mere creatures of *contingency?* Is delegated *authority* mere conditional *permission?* Is a *constitutional power* to be exercised by those who hold it, only by popular *sufferance?* Must it lie helpless at the pool of public sentiment, waiting the gracious troubling of its waters? Is it a lifeless corpse, save only when popular "consent" deigns to puff breath into its nostrils? Besides, if the consent of the people of the District be necessary, the consent of the *whole* people must be had—not that of a majority, however large. Majorities, to be authoritative, must be *legal*—and a legal majority without legislative power, right of representation, or even the electoral franchise, would be an anomaly. In the District of Columbia, such a thing as a majority in a legal sense is unknown to law. To talk of the power of a majority, or the will of a majority there, is mere mouthing. A majority? Then it has an authoritative will—and an organ to make it known—and an executive to carry it into effect—Where are they? We repeat it—if the consent of the people of the District be necessary, the consent of *every one* is necessary—and *universal* consent will come only with the Greek Kalends and a "perpetual motion." A single individual might thus *perpetuate* slavery in defiance of the expressed will of a whole people. The most common form of this fallacy is given by Mr. Wise, of Virginia, in his speech, February 16, 1835, in which he denied the power of Congress to abolish slavery in the District, unless the inhabitants owning slaves petitioned for it!! Southern members of Congress at the present session ring changes almost daily upon the same fallacy. What! pray Congress *to use* a power which it *has not?* "It is required of a man according to what he *hath*," saith the Scripture. I commend Mr. Wise to Paul for his ethics. Would that he had got his *logic* of him! If Congress does not possess the power, why taunt it with its weakness, by asking its exercise? Why mock it by demanding impossibilities? Petitioning, according to Mr. Wise, is, in matters of legislation, omnipotence itself; the very *source* of all constitutional power; for, *asking* Congress to do what it *cannot* do, gives it the power—to pray the exercise of a power that is *not, creates* it. A beautiful theory! Let us work it both ways. If to petition for the exercise of a power that is *not*, creates it—to petition against the exercise of a power that *is*, annihilates it. As southern gentlemen are partial to summary processes, pray, sirs, try the virtue of your own recipe on "exclusive legislation in all cases whatsoever;" a better subject for experiment and test of the prescription could not be had. But if the petitions of the citizens of the District give Congress the *right* to abolish slavery, they impose the *duty;* if they confer constitutional

authority, they create constitutional obligation. If Congress *may* abolish because of an expression of their will, it *must* abolish at the bidding of that will. If the people of the District are a *source of power* to Congress, their *expressed will* has the force of a constitutional provision, and has the same binding power upon the National Legislature. To make Congress dependent on the District for authority, is to make it a *subject* of its authority, restraining the exercise of its own discretion, and sinking it into a mere organ of the District's will. We proceed to another objection.

"The southern states would not have ratified the constitution, if they had supposed that it gave this power." It is a sufficient answer to this objection, that the northern states would not have ratified it, if they had supposed that it *withheld* the power. If "suppositions" are to take the place of the constitution—coming from both sides, they neutralize each other. To argue a constitutional question by *guessing* at the "suppositions" that might have been made by the parties to it, would find small favor in a court of law. But even a desperate shift is some easement when sorely pushed. If this question is to be settled by "suppositions," suppositions shall be forthcoming, and that without stint.

First, then, I affirm that the North ratified the constitution, "supposing" that slavery had begun to wax old, and would speedily vanish away, and especially that the abolition of the slave trade, which by the constitution was to be surrendered to Congress after twenty years, would cast it headlong.

Would the North have adopted the constitution, giving three-fifths of the "slave property" a representation, if it had "supposed" that the slaves would have increased from half a million to two millions and a half by 1838—and that the census of 1840 would give to the slave states, 30 representatives of "slave property?"

If they had "supposed" that this representation would have controlled the legislation of the government, and carried against the North every question vital to its interests, would Alexander Hamilton, Benjamin Franklin, Roger Sherman, Elbridge Gerry, William Livingston, John Langdon, and Rufus King have been such madmen, as to sign the constitution, and the Northern States such suicides as to ratify it? Every self-preserving instinct would have shrieked at such an infatuate immolation. At the adoption of the United States constitution, slavery was regarded as a fast waning system. This conviction was universal. Washington, Jefferson, Patrick Henry, Grayson, St. George Tucker, Madison, Wythe, Pendleton, Lee, Blair, Mason, Page, Parker, Edmund Randolph, Iredell, Spaight, Ramsey, William Pinckney, Luther Martin, James McHenry, Samuel Chase, and nearly all the illustrious names south of the Potomac, proclaimed it before the sun, that the days of slavery were beginning to be numbered. A reason urged in the convention that formed the United States constitution, why the word slave should not be used in

it, was, that *when slavery should cease* there might remain upon the National Charter no record that it had ever been. (See speech of Mr. Burrill, of R. I., on the Missouri question.)

I now proceed to show by testimony, that at the date of the United States constitution, and for several years before and after that period, slavery was rapidly on the wane; that the American Revolution with the great events preceding accompanying, and following it, had wrought an immense and almost universal change in the public sentiment of the nation on the subject, powerfully impelling it toward the entire abolition of the system—and that it was the *general belief* that measures for its abolition throughout the Union, would be commenced by the individual States generally before the lapse of many years. A great mass of testimony establishing this position is at hand and might be presented, but narrow space, little time, the patience of readers, and the importance of speedy publication, counsel brevity. Let the following proofs suffice. First, a few dates as points of observation.

The first *general* Congress met in 1774. The revolutionary war commenced in '75. Independence was declared in '76. The articles of confederacy were adopted by the thirteen states in '78. Independence acknowledged in '83. The convention for forming the U. S. constitution was held in '87, the state conventions for considering it in '87, and '88. The first Congress under the constitution in '89.

Dr. Rush, of Pennsylvania, one of the signers of the Declaration of Independence, in a letter to the celebrated Granville Sharps, May 1, 1773, says: "A spirit of humanity and religion begins to awaken in several of the colonies in favor of the poor negroes. The clergy begin to bear a public testimony against this violation of the laws of nature and christianity. Great events have been brought about by small beginnings. *Anthony Bènèzet stood alone a few years ago in opposing negro slavery in Philadelphia*, and NOW THREE-FOURTHS OF THE PROVINCE AS WELL AS OF THE CITY CRY OUT AGAINST IT."—(Stuart's Life of Sharpe, p. 21.)

In the preamble to the act prohibiting the importation of slaves into Rhode Island, June, 1774, is the following: "Whereas, the inhabitants of America are generally engaged in the preservation of their own rights and liberties, among which that of personal freedom must be considered the greatest, and as those who are desirous of enjoying all the advantages of liberty themselves, *should be willing to extend personal liberty to others*, therefore," &c.

October 20, 1774, the Continental Congress passed the following: "We, for ourselves and the inhabitants of the several colonies whom we represent, *firmly agree and associate under the sacred ties of virtue, honor, and love of our country*, as follows:

"2d Article. *We will neither import nor purchase any slaves imported* after the first day of December next, after which time we will *wholly discontinue* the slave trade, and we will neither be concerned

in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it."

The Continental Congress, in 1775, setting forth the causes and the necessity for taking up arms, say: "*If it were possible* for men who exercise their reason to believe that the Divine Author of our existence intended a part of the human race *to hold an absolute property in*, and *unbounded power over others*, marked out by infinite goodness and wisdom as the objects of a legal domination, never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the Parliamentof Great Britain some evidence that this dreadful authority over them has been granted to that body."

In 1776, the celebrated Dr. Hopkins, then at the head of New-England divines, published a pamphlet entitled, "An Address to the owners of negro slaves in the American colonies," from which the following is an extract: "The conviction of the unjustifiableness of this practice (slavery) has been *increasing*, and *greatly spread of late*, and *many* who have had slaves, have found themselves unable to justify their own conduct in holding them in bondage, to be induced to *set them at liberty*. May this conviction soon reach every owner of slaves in *North America!* * * * * * * * Slavery is, *in every instance*, wrong, unrighteous, and oppressive—a very great and crying sin—*there being nothing of the kind equal to it on the face of the earth.*"

The same year the American Congress issued a solemn MANIFESTO to the world. These were its first words: "We hold these truths to be self-evident, that *all* men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." *Once*, these were words of power; *now*, "a rhetorical flourish."

The celebrated Patrick Henry of Virginia, in a letter, of Jan. 18, 1773, to Robert Pleasants, afterwards president of the Virginia Abolition Society, says: "Believe me, I shall honor the Quakers for their noble efforts to abolish slavery. It is a debt we owe to the purity of our religion to show that it is at variance with that law that warrants slavery. I exhort you to persevere in so worthy a resolution."

In 1779, the Continental Congress ordered a pamphlet to be published, entitled, "Observations on the American Revolution," from which the following is an extract: "The great principle (of government) is and ever will remain in force, *that men are by nature free;* as accountable to him that made them, they must be so; and so long as we have any idea of divine *justice*, we must associate that of *human freedom*. Whether men can part with their liberty, is among the questions which have exercised the ablest writers; but it is *conceded on all hands, that the right to be free* CAN NEVER BE ALIENATED—still less is it practicable for one generation to mortgage the privileges of another."

Extract from the Pennsylvania act for the Abolition of Slavery, passed March 1, 1780: * * * "We conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others which has been extended to us. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations: * * * Therefore be it enacted, that no child born hereafter be a slave," &c.

Jefferson, in his Notes on Virginia, written just before the close of the Revolutionary War, says: "I think a change already perceptible since the origin of the present revolution. The spirit of the master is abating, that of the slave is rising from the dust, his condition mollifying, *the way I hope preparing under the auspices of heaven*, FOR A TOTAL EMANCIPATION, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation."

In a letter to Dr. Price, of London, who had just published a pamphlet in favor of the abolition of slavery, Mr. Jefferson, then Minister at Paris, (August 7, 1785,) says: "From the mouth to the head of the Chesapeake, *the bulk of the people will approve of your pamphlet in theory*, and it will find a respectable minority ready to *adopt it in practice*—a minority which, for weight and worth of character, *preponderates against the greater number.*" Speaking of Virginia, he says: "This is the next state to which we may turn our eyes for the interesting spectacle of justice in conflict with avarice and oppression, —a conflict in which THE SACRED SIDE IS GAINING DAILY RECRUITS. Be not, therefore discouraged—what you have written will do a *great deal of good*; and could you still trouble yourself with our welfare, no man is more able to give aid to the laboring side. The College of William and Mary, in Williamsburg, since the remodelling of its plan, is the place where are collected together all the young men of Virginia, under preparation for public life. They are there under the direction (most of them) of a Mr. Wythe, one of the most virtuous of characters, and *whose sentiments on the subject of slavery are unequivocal.* I am satisfied, if you could resolve to address an exhortation to those young men with all that eloquence of which you are master, that *its influence on the future decision of this important question would be great, perhaps decisive.* Thus, you see, that so far from thinking you have cause to repent of what you have done, *I wish you to do more, and wish it on an assurance of its effect.*"—Jefferson's Posthumous Works, vol. 1, p 268.

In 1786, John Jay, afterward Chief Justice of the United States, drafted and signed a petition to the Legislature of New York, on the subject of slavery, beginning with these words:

"Your memorialists being deeply affected by the situation of those, who, although FREE BY THE LAWS OF GOD, are held in slavery by the laws of the State," &c.

This memorial bore also the signatures of the celebrated Alexander Hamilton; Robert R. Livingston, afterward Secretary of Fo-

reign Affairs of the United States, and Chancellor of the State of New York; James Duane, Mayor of the City of New York, and many others of the most eminent individuals in the State.

In the preamble of an instrument, by which Mr. Jay emancipated a slave in 1784, is the following passage:

"Whereas, the children of men are by nature equally free, and cannot, without injustice, be either reduced to or HELD in slavery."

In his letter while Minister at Spain, in 1786, he says, speaking of the abolition of slavery: "Till America comes into this measure, her prayers to heaven will be IMPIOUS. This is a strong expression, but it is just. I believe God governs the world; and I believe it to be a maxim in his, as in our court, that those who ask for equity *ought to do it.*"

In 1785, the New York Manumission Society was formed. John Jay was chosen its first President, and held the office five years. *Alexander Hamilton* was its second President, and after holding the office one year, resigned upon his removal to Philadelphia as Secretary of the United States' Treasury. In 1787, the Pennsylvania Abolition Society was formed. Benjamin Franklin, warm from the discussions of the convention that formed the United States constitution, was chosen President, and Benjamin Rush, Secretary—both signers of the Declaration of Independence. In 1789, the Maryland Abolition Society was formed. Among its officers were Samuel Chace, Judge of the United States Supreme Court, and Luther Martin, a member of the convention that formed the United States constitution. In 1790, the Connecticut Abolition Society was formed. The first President was Rev. Dr. Stiles, President of Yale College, and the Secretary, Simeon Baldwin, (the late Judge Baldwin of New Haven.) In 1791, this Society sent a memorial to Congress, from which the following is an extract:

"From a sober conviction of the unrighteousness of slavery, your petitioners have long beheld, with grief, our fellow men doomed to perpetual bondage, in a country which boasts of her freedom. Your petitioners are fully of opinion, that calm reflection will at last convince the world, that the whole system of African slavery is unjust in its nature—impolitic in its principles—and, in its consequences, ruinous to the industry and enterprise of the citizens of these States. From a conviction of these truths, your petitioners were led, by motives, we conceive, of general philanthropy, to associate ourselves for the protection and assistance of this unfortunate part of our fellow men; and, though this Society has been *lately* established, it has now become *generally extensive* through this state, and, we fully believe, *embraces, on this subject, the sentiments of a large majority of its citizens.*"

The same year the Virginia Abolition Society was formed. This Society, and the Maryland Society, had auxiliaries in different parts of those States. Both societies sent up memorials to Congress. The memorial of the Virginia Society is headed—"The memorial of the

Virginia Society, for promoting the Abolition of Slavery, &c." The following is an extract:

"Your memorialists, fully believing that 'righteousness exalteth a nation,' and that slavery is not only an odious degradation, but an *outrageous violation of one of the most essential rights of human nature, and utterly repugnant to the precepts of the gosp* which breathes 'peace on earth, good will to men;' lament that a practice, so inconsistent with true policy and the inalienable rights of men, should subsist in so enlightened an age, and among a people professing, that all mankind are, by nature, equally entitled to edom."

About the same time a Society was formed in New-Jersey. It had an acting committee of five members in each county in the State. The following is an extract from the preamble to its constitution:

"It is our boast, that we live under a government founded on principles of justice and reason, wherein *life, liberty*, and the *pursuit of happiness*, are recognised as the universal rights of men; and whilst we are anxious to preserve these rights to ourselves, and transmit them inviolate, to our posterity, we *abhor that inconsistent, illiberal, and interested policy, which withholds those rights from an unfortunate and degraded class of our fellow creatures.*"

Among other distinguished individuals who were efficient officers of these Abolition Societies, and delegates from their respective state societies, at the annual meetings of the American convention for promoting the abolition of slavery, were Hon. Uriah Tracy, United States' Senator, from Connecticut; Hon. Zephaniah Swift, Chief Justice of the same State; Hon. Cesar A. Rodney, Attorney General of the United States; Hon. James A. Bayard, United States Senator, from Delaware; Governor Bloomfield, of New Jersey; Hon. Wm. Rawle, the late venerable head of the Philadelphia bar; Dr. Casper Wistar, of Philadelphia; Messrs. Foster and Tillinghast, of Rhode Island; Messrs. Ridgeley, Buchanan, and Wilkinson, of Maryland; and Messrs. Pleasants, McLean, and Anthony, of Virginia.

In July, 1787, the old Congress passed the celebrated ordinance, abolishing slavery in the northwestern territory, and declaring that it should never thereafter exist there. This ordinance was passed while the convention that formed the United States constitution was in session. At the first session of Congress under the constitution, this ordinance was ratified by a special act. Washington, fresh from the discussions of the convention, in which *more than forty days had been spent in adjusting the question of slavery, gave it his approval.* The act passed with only one dissenting voice, (that of Mr. Yates, of New-York,) *the South equally with the North avowing the fitness and expediency of the measure on general considerations, and indicating thus early the line of national policy, to be pursued by the United States Government on the subject of slavery.*

In the debates in the North Carolina Convention, Mr. Iredell, afterward a Judge of the United States' Supreme Court, said, "*When the entire abolition of slavery takes place,* it will be an event

which must be pleasing to every generous mind and every friend of human nature." Mr. Galloway said, "I wish to see this abominable trade put an end to. I apprehend the clause (touching the slave trade) means *to bring forward manumission.*" Luther Martin, of Md., a member of the convention that formed the United States constitution, said, "We ought to authorize the General Government to make such regulations as shall be thought most advantageous for *the gradual abolition of slavery*, and the *emancipation of the slaves* which are already in the States." Judge Wilson, of Pennsylvania, one of the framers of the constitution, said, in the Pennsylvania convention of '87, Deb. Pa. Con. p. 303, 156: "I consider this (the clause relative to the slave trade) as laying the foundation for *banishing slavery out of this country.* It will produce the same kind of gradual change which was produced in Pennsylvania; the new states which are to be formed will be under the control of Congress in this particular, and *slaves will never be introduced* among them. It presents us with the pleasing prospect that the rights of mankind will be acknowledged and established *throughout the Union.* Yet the lapse of a few years, and Congress will have power to *exterminate slavery* within our borders." In the Virginia convention of '87, Mr. Mason, author of the Virginia constitution, said, "The augmentation of slaves weakens the States, and such a trade is *diabolical* in itself, and disgraceful to mankind. As much as I value a union of all the states, I would not admit the southern states, (i. e., South Carolina and Georgia,) into the union, *unless they agree to a discontinuance of this disgraceful trade.*" Mr. Tyler opposed with great power the clause prohibiting the abolition of the slave trade till 1808, and said, "My earnest desire is, that it shall be handed down to posterity that I oppose this wicked clause." Mr. Johnson said, "The principle of emancipation *has begun since the revolution. Let us do what we will, it will come round.*"—[Deb. Va. Con. p. 463.] Patrick Henry, arguing the power of Congress under the United States constitution to abolish slavery in the States, said, in the same convention, "Another thing will contribute to bring this event (the abolition of slavery) about. Slavery is *detested.* We feel its fatal effects; we deplore it with all the pity of humanity."—[*Deb. Va. Con.* p. 431.] In the Mass. Con. of '88, Judge Dawes said, "Although slavery is not smitten by an apoplexy, yet *it has received a mortal wound*, and will die of consumption."—[*Deb. Mass. Con.* p. 60.] General Heath said that, "Slavery was confined to the States *now existing*, it *could not be extended.* By their ordinance, Congress had declared that the new States should be republican States, *and have no slavery.*"—p. 147.

In the debate in the first Congress, February 11th and 12th, 1789, on the petitions of the Society of Friends, and the Pennsylvania Abolition Society, Mr. Parker, of Virginia, said, "I hope, Mr. Speaker, the petition of these respectable people will be attended to *with all the readiness the importance of its object demands*; and I cannot help expressing the pleasure I feel in finding *so considerable a part* of the

community attending to matters of such a momentous concern to the *future prosperity* and happiness of the people of America. I think it my duty, as a citizen of the Union, *to espouse their cause.*"

Mr. Page, of Virginia, (afterward Governor)—"Was *in favor* of the commitment; he hoped that the designs of the respectable memorialists would not be stopped at the threshold, in order to preclude a fair discussion of the prayer of the memorial. With respect to the alarm that was apprehended, he conjectured there was none; but there might be just cause, if the memorial was *not* taken into consideration. He placed himself in the case of a slave, and said, that on hearing that Congress had refused to listen to the decent suggestions of a respectable part of the community, he should infer, that the general government, *from which was expected great good would result to* EVERY CLASS *of citizens*, had shut their ears against the voice of humanity, and he should despair of any alleviation of the miseries he and his posterity had in prospect; if any thing could induce him to rebel, it must be a stroke like this, impressing on his mind all the horrors of despair. But if he was told, that application was made in his behalf, and that Congress were willing to hear what could be urged in favor of discouraging the practice of importing his fellow-wretches, he would trust in their justice and humanity, and *wait the decision patiently.*"

Mr. Scott, of Pennsylvania: "I cannot, for my part, conceive how any person *can be said to acquire a property in another;* but enough of those who reduce men to the state of transferable goods, or use them like beasts of burden, who deliver them up as the property or patrimony of another man. Let us argue on principles countenanced by reason, and becoming humanity. *I do not know how far I might go, if I was one of the judges of the United States, and those people were to come before me and claim their emancipation, but I am sure I would go as far as I could.*"

Mr. Burke, of South Carolina, said, "He *saw the disposition of the House*, and he feared it would be referred to a committee, maugre all their opposition."

Mr. Smith, of South Carolina, said, "That on entering into this government, they (South Carolina and Georgia) apprehended that the other states, not knowing the necessity the citizens of the Southern states were under to hold this species of property, *would, from motives of humanity and benevolence, be led to vote for a general emancipation;* and had they not seen, that the constitution provided against the effect of such a disposition, I may be bold to say, they never would have adopted it."

In the debate, at the same session, May 13th, 1789, on the petition of the Society of Friends respecting the slave trade, Mr. Parker, of Virginia, said, "He hoped Congress would do all that lay in their power *to restore to human nature its inherent privileges*, and if possible, wipe off the stigma, which America labored under. The inconsistency in our principles, with which we are justly charged *should be done away*, that we may show by our actions the pure beneficence of

the doctrine we held out to the world in our Declaration of Independence."

Mr. Jackson, of Georgia, said, "IT WAS THE FASHION OF THE DAY TO FAVOR THE LIBERTY OF THE SLAVES. * * * * * What is to be done for compensation? Will Virginia set all her negroes free? Will they give up the money they have cost them; and to whom? *When this practice comes to be tried, then the sound of liberty will lose those charms which make it grateful to the ravished ear.*"

Mr. Madison, of Virginia,—"The dictates of humanity, the principles of the people, the national safety and happiness, and prudent policy, require it of us. The constitution has particularly called our attention to it. * * * * * * * I conceive the constitution in this particular was formed in order that the Government, whilst it was restrained from laying a total prohibition, might be able to *give some testimony of the sense of America*, with respect to the African trade. * * * * * * * It is to be hoped, that by expressing a national disapprobation of this trade, we may destroy it, and save ourselves from reproaches, AND OUR POSTERITY THE IMBECILITY EVER ATTENDANT ON A COUNTRY FILLED WITH SLAVES. I do not wish to say any thing harsh to the hearing of gentlemen who entertain different sentiments from me, or different sentiments from those I represent. But if there is any one point in which it is clearly the policy of this nation, so far as we constitutionally can, *to vary the practice* obtaining under some of the state governments, it is this. But it is *certain* a majority of the states are *opposed to this practice.*"—[Cong. Reg. v. 1, p. 308–12.

A writer in the "Gazette of the United States," Feb. 20th, 1790, (then the government paper,) who opposes the abolition of slavery, and avows himself a *slaveholder*, says, "I have seen in the papers accounts of *large associations*, and applications to Government for *the abolition of slavery*. Religion, humanity, and the generosity natural to a free people, are the *noble principles which dictate those measures.* SUCH MOTIVES COMMAND RESPECT, AND ARE ABOVE ANY EULOGIUM WORDS CAN BESTOW."

It is well known, that in the convention that formed the constitution of Kentucky in 1780, the effort to prohibit slavery was nearly successful. The writer has frequently heard it asserted in Kentucky, and has had it from some who were members of that convention, that a decided majority of that body would have voted for its exclusion, but for the great efforts and influence of two large slaveholders—men of commanding talents and sway—Messrs. Breckenridge and Nicholas. The following extract from a speech made in that convention by a member of it, Mr. Rice, a native Virginian, is a specimen of the *free discussion* that prevailed on that "delicate subject." Said Mr. Rice: "I do a man greater injury, when I deprive him of his liberty, than when I deprive him of his property. It is vain for me to plead that I have the sanction of law; for this makes the injury the greater—it arms the community against him, and makes his case

desperate. The owners of such slaves then are *licensed robbers*, and not the just proprietors of what they claim. Freeing them is not depriving them of property, but *restoring it to the right owner.* In America, a slave is a standing monument of the tyranny and inconsistency of human governments. The master is the enemy of the slave; he *has made open war upon him*, AND IS DAILY CARRYING IT ON in unremitted efforts. Can any one imagine, then, that the slave is indebted to his master, and *bound to serve him?* Whence can the obligation arise? What is it founded upon? What is my duty to an enemy that is carrying on war against me? I do not deny, but in some circumstances, it is the duty of the slave to serve; but it is a duty he owes himself, and not his master."

President Edwards, the younger, said, in a sermon preached before the Connecticut Abolition Society, Sept. 15, 1791: "Thirty years ago, scarcely a man in this country thought either the slave trade or the slavery of negroes to be wrong; but now how many and able advocates in private life, in our legislatures, in Congress, have appeared, and have openly and irrefragably pleaded the rights of humanity in this as well as other instances? And if we judge of the future by the past, *within fifty years from this time, it will be as shameful for a man to hold a negro slave, as to be guilty of common robbery or theft.*"

In 1794, the General Assembly of the Presbyterian church adopted its "Scripture proofs," notes, comments, &c. Among these was the following:

"1 Tim. i. 10. The law is made for manstealers. This crime among the Jews exposed the perpetrators of it to capital punishment. Exodus xxi. 16. And the apostle here classes them with *sinners of the first rank.* The word he uses, in its original import comprehends all who are concerned in bringing any of the human race into slavery, or in *retaining* them in it. *Stealers of men* are all those who bring off slaves or freemen, and *keep*, sell, or buy them."

In 1794, Dr. Rush declared: "Domestic slavery is repugnant to the principles of Christianity. It prostrates every benevolent and just principle of action in the human heart. It is rebellion against the authority of a common Father. It is a practical denial of the extent and efficacy of the death of a common Savior. It is an usurpation of the prerogative of the great Sovereign of the universe, who has solemnly claimed an exclusive property in the souls of men."

In 1795, Mr. Fiske, then an officer of Dartmouth College, afterward a Judge in Tennessee, said, in an oration published that year, speaking of slaves: "I steadfastly maintain, that we must bring them to *an equal standing, in point of privileges, with the whites!* They must enjoy all the rights belonging to human nature."

When the petition on the abolition of the slave trade was under discussion in the Congress of '89, Mr. Brown, of North Carolina, said, "The emancipation of the slaves *will be effected* in time; it ought to be a gradual business, but he hoped that Congress would not *precipi-*

tate it to the great injury of the southern States." Mr. Hartley, of Pennsylvania, said, in the same debate, "*He was not a little surprised to hear the cause of slavery advocated in that house.*" WASHINGTON, in a letter to Sir John Sinclair, says, "There are, in Pennsylvania, laws for the gradual abolition of slavery which neither Maryland nor Virginia have at present, but which *nothing is more certain* than that they *must have*, and at a period NOT REMOTE." In 1782, Virginia passed her celebrated manumission act. Within nine years from that time nearly eleven thousand slaves were voluntarily emancipated by their masters. Judge Tucker's "Dissertation on Slavery," p. 72. In 1787, Maryland passed an act legalizing manumission. Mr. Dorsey, of Maryland, in a speech in Congress, December 27th, 1826, speaking of manumissions under that act, said, that "*The progress of emancipation was astonishing*, the State became crowded with a free black population."

The celebrated William Pinkney, in a speech before the Maryland House of Delegates, in 1789, on the emancipation of slaves, said, "Sir, by the eternal principles of natural justice, *no master in the state has a right to hold his slave in bondage for a single hour.* . . I would as soon believe the incoherent tale of a schoolboy, who should tell me he had been frightened by a ghost, as that the grant of this permission (to emancipate) ought in any degree to alarm us. Are we apprehensive that these men will become more dangerous by becoming freemen? Are we alarmed, lest by being admitted into the enjoyment of civil rights, they will be inspired with a deadly enmity against the rights of others? Strange, unaccountable paradox! How much more rational would it be, to argue that the natural enemy of the privileges of a freeman, is he who is robbed of them himself! Dishonorable to the species is the idea that they would ever prove injurious to our interests—released from the shackles of slavery, by the justice of government and the bounty of individuals—the want of fidelity and attachment would be next to impossible."

Hon. James Campbell, in an address before the Pennsylvania Society of the Cincinnati, July 4, 1787, said, "Our separation from Great Britain has extended the empire of *humanity*. The time *is not far distant* when our sister states, in imitation of our example, *shall turn their vassals into freemen.*" The Convention that formed the United States' constitution being then in session, attended at the delivery of this oration with General Washington at their head.

A Baltimore paper of September 8th, 1780, contains the following notice of Major General Gates: "A few days ago passed through this town the Hon. General Gates and lady. The General, previous to leaving Virginia, summoned his numerous family of slaves about him, and amidst their tears of affection and gratitude, gave them their FREEDOM."

In 1791 the university of William and Mary, in Virginia, conferred upon Granville Sharpe the degree of Doctor of Laws. Sharpe was at that time the acknowledged head of British abolitionists. His in-

defatigable exertions, prosecuted for years in the case of Somerset, procured that memorable decision in the Court of King's Bench, which settled the principle that no slave could be held in England. He was most uncompromising in his opposition to slavery, and for twenty years previous he had spoken, written, and accomplished more against it than any man living.

In the "Memoirs of the Revolutionary War in the Southern Department," by Gen. Lee, of Va., Commandant of the Partizan Legion, is the following: "The Constitution of the United States, adopted lately with so much difficulty, has effectually provided against this evil, (by importation) after a few years. It is much to be lamented that having done so much in this way, *a provision had not been made for the gradual abolition of slavery.*"—p. 233, 4.

Mr. Tucker, of Virginia, Judge of the Supreme Court of that state, and professor of law in the University of William and Mary, addressed a letter to the General Assembly of that state, in 1796, urging the abolition of slavery; from which the following is an extract. Speaking of the slaves in Virginia, he says: "Should we not, at the time of the revolution, have loosed their chains and broken their fetters; or if the difficulties and dangers of such an experiment prohibited the attempt, during the convulsions of a revolution, is it not our duty, *to embrace the first moment* of constitutional health and vigor to effectuate so desirable an object, and to remove from us a stigma with which our enemies will never fail to upbraid us, nor consciences to reproach us?"

Mr. Faulkner, in a speech before the Virginia Legislature, Jan. 20, 1832, said—"The idea of a gradual emancipation and removal of the slaves from this commonwealth, is coeval with the declaration of our independence from the British yoke. It sprung into existence during the first session of the General Assembly, subsequent to the formation of your republican government. When Virginia stood sustained in her legislation by the pure and philosophic intellect of Pendleton—by the patriotism of Mason and Lee—by the searching vigor and sagacity of Wythe, and by the all-embracing, all-comprehensive genius of Thomas Jefferson! Sir, it was a committee composed of those five illustrious men, who, in 1777, submitted to the general assembly of this state, then in session, *a plan for the gradual emancipation of the slaves of this commonwealth.*"

Hon. Benjamin Watkins Leigh, late United States' senator from Virginia, in his letters to the people of Virginia, in 1832, signed Appomattox, p. 43, says: "I thought, till very lately, that it was known to every body that during the Revolution, *and for many years after, the abolition of slavery was a favorite topic with many of our ablest statesmen,* who entertained, with respect, all the schemes which wisdom or ingenuity could suggest for accomplishing the object. Mr. Wythe, to the day of his death, *was for a simple abolition, considering the objection to color as founded in prejudice.* By degrees, all

projects of the kind were abandoned. Mr. Jefferson *retained* his opinion, and now we have these projects revived."

Governor Barbour, of Virginia, in his speech in the U. S. Senate, on the Missouri question, Jan. 1820, said :—"We are asked why has Virginia *changed her policy* in reference to slavery? That the sentiments *of our most distinguished men*, for thirty years *entirely corresponded* with the course which the friends of the restriction (of slavery in Missouri) now advocated; and that the Virginia delegation, one of whom was the late President of the United States, voted for the restriction, (of slavery) in the northwestern territory, and that Mr. Jefferson has delineated a gloomy picture of the baneful effects of slavery. When it is recollected that the Notes of Mr. Jefferson were written during the progress of the revolution, it is no matter of surprise that the writer should have imbibed a large portion of that enthusiasm which such an occasion was so well calculated to produce. As to the consent of the Virginia delegation to the restriction in question, whether the result of a disposition to restrain the slave trade indirectly, or the influence of that *enthusiasm* to which I have just alluded, * * * * it is not now important to decide. We have witnessed its effects. The liberality of Virginia, or, as the result may prove, her folly, which submitted to, or, if you will, PROPOSED *this measure*, (abolition of slavery in the N. W. territory) has eventuated in effects which speak a monitory lesson. *How is the representation from this quarter on the present question?*"

Mr. Imlay, in his early history of Kentucky, p. 185, says: "We have disgraced the fair face of humanity, and trampled upon the sacred privileges of man, at the very moment that we were exclaiming against the tyranny of your (the English) ministry. But in contending for the birthright of freedom, we have learned to feel *for the bondage of others*, and in the libations we offer to the goddess of liberty, we *contemplate an emancipation of the slaves of this country*, as honorable to themselves as it will be glorious to us."

In the debate in Congress, Jan. 20, 1806, on Mr. Sloan's motion to lay a tax on the importation of slaves, Mr. Clark of Va. said: "He was no advocate for a system of slavery." Mr. Marion, of S. Carolina, said: "He never had purchased, nor should he ever purchase a slave." Mr. Southard said: "Not revenue, but an expression of the *national sentiment* is the principal object." Mr. Smilie—"I rejoice that the word (slave) is not in the constitution; its not being there does honor to the worthies who would not suffer it to become a *part* of it." Mr. Alston, of N. Corolina—"In two years we shall have the power to prohibit the trado altogether. Then this House will be UNANIMOUS. No one will object to our exercising our full constitutional powers." National Intelligencer, Jany. 24, 1806.

These witnesses need no vouchers to entitle them to credit—nor their testimony comments to make it intelligible—their *names* are their *endorsers* and their strong words their own interpreters. We wave all com-

ments. Our readers are of age. Whosoever hath ears to *hear*, let him HEAR. And whosoever will not hear the fathers of the revolution, the founders of the government, its chief magistrates, judges, legislators and sages, who dared and periled all under the burdens, and in the heat of the day that tried men's souls— then "neither will he be persuaded though THEY rose from the dead."

Some of the points established by the testimony are—The universal expectation that the *moral* influence of Congress, of state legislatures, of seminaries of learning, of churches, of the ministers of religion, and of public sentiment widely embodied in abolition societies, would be exerted against slavery, calling forth by argument and appeal the moral sense of the nation, and creating a power of opinion that would abolish the system throughout the union. In a word, that free speech and a free press would be wielded against slavery without ceasing and without restriction. Full well did the south know, not only that the national government would probably legislate against slavery wherever the constitution placed it within its reach, but she knew also that Congress had already marked out the line of national policy to be pursued on the subject—had committed itself before the world to a course of action against slavery, wherever she could move upon it without encountering a conflicting jurisdiction—that the nation had established by solemn ordinance a memorable precedent for subsequent action, by abolishing slavery in the northwest territory, and by declaring that it should never thenceforward exist there; and this too, as soon as by cession of Virginia and other states, the territory came under Congressional control. The south knew also that the sixth article in the ordinance prohibiting slavery was first proposed by the largest slaveholding state in the confederacy—that the chairman of the committee that reported the ordinance was a slaveholder—that the ordinance was enacted by Congress during the session of the convention that formed the United States Constitution—that the provisions of the ordinance were, both while in prospect, and when under discussion, matters of universal notoriety and *approval* with all parties, and when finally passed, received the vote *of every member of Congress from each of the slaveholding states*. The south also had every reason for believing that the first Congress under the constitution would *ratify* that ordinance—as it *did* unanimously.

A crowd of reflections, suggested by the preceding testimony, press for utterance. The right of petition ravished and trampled by its constitutional guardians, and insult and defiance hurled in the faces of the SOVEREIGN PEOPLE while calmly remonstrating *with their* SERVANTS for violence committed on the nation's charter and their own dearest rights! Added to this "the right of peaceably assembling" violently wrested—the rights of minorities, *rights* no longer—free speech struck dumb—free *men* outlawed and murdered—free presses cast into the streets and their fragments strewed with shoutings, or flourished in triumph before the gaze of approving crowds as proud mementos of prostrate law!

The spirit and power of our fathers, where are they? Their deep homage always and every where rendered to FREE THOUGHT, with its *inseparable signs—free speech and a free press*—their reverence for justice, liberty, *rights* and all-pervading law, where are they?

But we turn from these considerations—though the times on which we have fallen, and those towards which we are borne with headlong haste, call for their discussion as with the voices of departing life—and proceed to topics relevant to the argument before us.

The seventh article of the amendments to the constitution is alleged to withhold from Congress the power to abolish slavery in the District. "No person shall be deprived of life, liberty, or property, without due process of law." All the slaves in the District have been "deprived of liberty" by legislative acts. Now, these legislative acts "depriving" them "of liberty," were either "due process of law," or they were *not*. If they *were*, then a legislative act, taking from the master that "property" which is the identical "liberty" previously taken from the slave, would be "due process of law" *also*, and of course a *constitutional* act; but if the legislative acts "depriving" them of "liberty" were *not* "due process of law," then the slaves were deprived of liberty *unconstitutionally*, and these acts are *void*. In that case the *constitution emancipates them*.

If the objector reply, by saying that the import of the phrase "due process of law," is *judicial* process solely, it is granted, and that fact is our rejoinder; for no slave in the District *has* been deprived of his liberty by "a judicial process," or, in other words, by "due process of law;" consequently, upon the objector's own admission, every slave in the District has been deprived of liberty *unconstitutionally*, and is therefore *free by the constitution*. This is asserted only of the slaves under the "exclusive legislation" of Congress.

The last clause of the article under consideration is quoted for the same purpose: "Nor shall private property be taken for public use without just compensation." Each of the state constitutions has a clause of similar purport. The abolition of slavery in the District by Congress, would not, as we shall presently show, violate this clause either directly or by implication. Granting for argument's sake, that slaves are "private property," and that to emancipate them, would be to "take private property" for "public use," the objector admits the power of Congress to do *this*, provided it will do something *else*, that is, *pay* for them. Thus, instead of denying the *power*, the objector not only admits, but *affirms* it, as the ground of the inference that compensation must accompany it. So far from disproving the existence of *one* power, the objector asserts the existence of *two*—one, the power to take the slaves from their masters, the other, the power to take the property of the United States to pay for them.

If Congress cannot constitutionally impair the right of private property, or take it without compensation, it cannot constitutionally, *legalize* the perpetration of such acts, by *others*, nor *protect* those who commit them. Does the power to rob a man of his earnings, rob the

earner of his *right* to them? Who has a better right to the *product* than the producer?—to the *interest*, than the owner of the *principal*?—to the hands and arms, than he from whose shoulders they swing?—to the body and soul, than he whose they *are*? Congress not only impairs but annihilates the right of private property, while it withholds from the slaves of the District their title to *themselves*. What! Congress powerless to protect a man's right to *himself*, when it can make inviolable the right to a *dog!* But, waving this, I deny that the abolition of slavery in the District would violate this clause. What does the clause prohibit? The "taking" of "private property" for "public use." Suppose Congress should emancipate the slaves in the District, what would it "*take?*" Nothing. What would it *hold?* Nothing. What would it put to "public use?" Nothing. Instead of *taking* "private property," Congress, by abolishing slavery, would say "*private property* shall not *be* taken; and those who have been robbed of it already, shall be kept out of it no longer; and since every man's right to his own body is *paramount*, he shall be protected in it." True, Congress may not arbitrarily take property, *as* property, from one man and give it to another—and in the abolition of slavery no such thing is done. A legislative act changes the *condition* of the slave—makes him his own *proprietor* instead of the property of another. It determines a question of *original right* between two classes of persons—doing an act of justice to one, and restraining the other from acts of injustice; or, in other words, preventing one from robbing the other, by granting to the injured party the protection of just and equitable laws.

Congress, by an act of abolition, would change the condition of seven thousand "persons" in the District, but would "take" nothing. To construe this provision so as to enable the citizens of the District to hold as property, and in perpetuity, whatever they please, or to hold it as property in all circumstances—all necessity, public welfare, and the will and power of the government to the contrary notwithstanding—is a total perversion of its whole *intent*. The *design* of the provision, was to throw up a barrier against Governmental aggrandizement. The right to "take property" for *State uses* is one thing;—the right so to adjust the *tenures* by which property is held, that *each may have his own secured to him*, is another thing, and clearly within the scope of legislation. Besides, if Congress were to "take" the slaves in the District, it would be *adopting*, not abolishing slavery—becoming a slaveholder itself, instead of requiring others to be such no longer. The clause in question, prohibits the "taking" of individual property for public uses, to be employed or disposed of *as* property for governmental purposes. Congress, by abolishing slavery in the District, would do no such thing. It would merely change the *condition* of that which has been recognised as a qualified property by congressional acts, though previously declared "persons" by the constitution. More than this is done continually by Congress and every other Legislature. Property the most absolute and unquali-

fied, is annihilated by legislative acts. The embargo and non-intercourse act, prostrated at a stroke, a forest of shipping, and sunk millions of capital. To say nothing of the power of Congress to take hundreds of millions from the people by direct taxation, who doubts its power to abolish at once the whole tariff system, change the seat of Government, arrest the progress of national works, prohibit any branch of commerce with the Indian tribes or with foreign nations, change the locality of forts, arsenals, magazines, dock yards, &c., to abolish the Post Office system, the privilege of patents and copyrights, &c. By such acts Congress might, in the exercise of its acknowledged powers, annihilate property to an incalculable amount, and that without becoming liable to claims for compensation.

Finally, this clause prohibits the taking for public use of "*property.*" The constitution of the United States does not recognise slaves as "PROPERTY" any where, and it does not recognise them in *any sense* in the District of Columbia. All allusions to them in the constitution recognise them as "persons." Every reference to them points *solely* to the element of *personality;* and thus, by the strongest implication, declares that the constitution *knows* them only as "persons," and *will* not recognise them in any other light. If they escape into free States, the constitution authorizes their being taken back. But how? Not as the property of an "owner," but as "persons;" and the peculiarity of the expression is a marked recognition of their *personality*—a refusal to recognise them as chattels—"persons *held* to service." Are *oxen* "*held* to service?" That can be affirmed only of *persons.* Again, slaves give political power as "persons." The constitution, in settling the principle of representation, requires their enumeration in the census. How? As property? Then why not include race horses and game cocks? Slaves, like other inhabitants, are enumerated as "persons." So by the constitution, the government was pledged to non-interference with "the migration or importation of such *persons*" as the States might think proper to admit until 1808, and authorized the laying of a tax on each "person" so admitted. Further, slaves are recognised as *persons* by the exaction of their *allegiance* to the government. For offences against the government slaves are tried as *persons;* as persons they are entitled to counsel for their defence, to the rules of evidence. and to "due process of law," and as *persons* they are punished. True, they are loaded with cruel disabilities in courts of law, such as greatly obstruct and often inevitably defeat the ends of justice, yet they are still recognised as *persons.* Even in the legislation of Congress, and in the diplomacy of the general government, notwithstanding the frequent and wide departures from the integrity of the constitution on this subject, slaves are not recognised as *property* without qualification. Congress has always refused to grant compensation for slaves killed or taken by the enemy, even when these slaves had been impressed into the United States' service. In half a score of cases since the last war, Congress has rejected such applications for compensation. Besides, both in

Congressional acts, and in our national diplomacy, slaves and property are not used as convertible terms. When mentioned in treaties and state papers it is in such a way as to distinguish them from mere property, and generally by a recognition of their *personality*. In the invariable recognition of slaves as *persons*, the United States' constitution caught the mantle of the glorious Declaration, and most worthily wears it.—It recognizes all human beings as "men," "persons," and thus as "equals." In the original draft of the Declaration, as it came from the hand of Jefferson, it is alleged that Great Britain had "waged a cruel war against *human* nature itself, violating its most sacred rights of life and liberty in the persons of a distant people, carrying them into slavery, * * determined to keep up a market where MEN should be bought and sold,"—thus disdaining to make the charter of freedom a warrant for the arrest of *men*, that they might be shorn both of liberty and humanity.

The celebrated Roger Sherman, one of the committee of five appointed draft the Declaration of Independence, and also a member of the convention that formed the United States' constitution, said, in the first Congress after its adoption: "The constitution *does not consider these persons*, (slaves,) *as a species of property*."—[Lloyd's Cong. Reg. v. 1, p. 313.] That the United States' Constitution does not make slaves "property," is shown in the fact, that no person, either as a citizen of the United States, or by having his domicile within the United States' government, can hold slaves. He can hold them only by deriving his power from *state* laws, or from the laws of Congress, if he hold slaves within the District. But no person resident within the United States' jurisdiction, and *not* within the District, nor within a state whose laws support slavery, nor "held to service" under the laws of such state or district, having escaped therefrom, *can be held as a slave.*

Men can hold *property* under the United States' government though residing beyond the bounds of any state, district, or territory. An inhabitant of the Wisconsin Territory can hold property there under the laws of the United States, but he cannot hold *slaves* there under the United States' laws, nor by virtue of the United States' Constitution, nor upon the ground of his United States citizenship, nor by having his domicile within the United States jurisdiction. The constitution no where recognizes the right to "slave property," *but merely the fact that the states have jurisdiction each in its own limits, and that there are certain "persons" within their jurisdictions "held to service" by their own laws.*

Finally, in the clause under consideration, "private property" is not to be taken "without *just* compensation." "JUST!" If justice is to be appealed to in determining the *amount* of compensation, let her determine the *grounds* also. If it be her province to say *how much* compensation is "just," it is hers to say whether *any* is "just,"—whether the slave is "just" property *at all*, rather than a "*person*." Then, if justice adjudges the slave to be "private prop-

erty," it adjudges him to be *his own* property, since the right to one's *self* is the first right—the source of all others—the original stock by which they are accumulated—the principal, of which they are the interest. And since the slave's "private property" has been "taken," and since "compensation" is impossible—there being no *equivalent* for one's self—the least that can be done is to restore to him his original private property.

Having shown that in abolishing slavery, "property" would not be "taken for public use," it may be added that, in those states where slavery has been abolished by law, no claim for compensation has been allowed. Indeed the manifest absurdity of demanding it, seems to have quite forestalled the *setting up* of such a claim.

The abolition of slavery in the District, instead of being a legislative anomaly, would proceed upon the principles of every day legislation. It has been shown already, that the United States' Constitution does not recognize slaves as "property." Yet ordinary legislation is full of precedents, showing that even *absolute* property is in many respects wholly subject to legislation. The repeal of the law of entailments—all those acts that control the alienation of property, its disposal by will, its passing to heirs by descent, with the question, who shall be heirs, and what shall be the rule of distribution among them, or whether property shall be transmitted at all by descent, rather than escheat to the state—these, with statutes of limitation, and various other classes of legislative acts, serve to illustrate the acknowledged scope of the law-making power, even where property *is in every sense absolute*. Persons whose property is thus affected by public laws, receive from the government no compensation for their losses, unless the state has been put into possession of the property taken from them.

The preamble of the United States' Constitution declares it to be a fundamental object of the organization of the government "to ESTABLISH JUSTICE." Has Congress *no power* to do that for which it was made the *depository of power?* CANNOT the United States Government fulfil the purpose *for which it was brought into being?*

To abolish slavery, is to take from no rightful owner his property; but to "*establish justice*" between two parties. To emancipate the slave, is to "*establish justice*" between him and his master—to throw around the person, character, conscience, liberty, and domestic relations of the one, *the same law* that secures and blesses the other. In other words, to prevent by *legal restraints* one class of men from seizing upon another class, and robbing them at pleasure of their earnings, their time, their liberty, their kindred, and the very use and ownership of their own persons. Finally, to abolish slavery is to proclaim and *enact* that innocence and helplessness—now *free plunder*—are entitled to *legal protection;* and that power, avarice, and lust, shall no longer gorge upon their spoils under the license, and by the ministrations of *law!* Congress, by possessing "exclusive legislation in all cases whatsoever," has a *general protective power* for ALL the inhabi-

tants of the District. If it has no power to protect *one* man, it has none to protect another—none to protect *any*—and if it *can* protect *one* man and is *bound* to protect him, it *can* protect *every* man—all men—and is *bound* to do it. All admit the power of Congress to protect the masters in the District against their slaves. What part of the constitution gives the power? The clause so often quoted,—"power of legislation in all cases whatsoever," equally in the "*case*" of defending the blacks against the whites, as in that of defending the whites against the blacks. The power is given also by Art. 1, Sec. 8, clause 15—"Congress shall have power to suppress insurrections"—a power to protect, as well blacks against whites, as whites against blacks. If the constitution gives power to protect *one* class against the other, it gives power to protect *either* against the other. Suppose the blacks in the District should seize the whites, drive them into the fields and kitchens, force them to work without pay, flog them, imprison them, and sell them at their pleasure, where would Congress find power to restrain such acts? Answer; a *general* power in the clause so often cited, and an *express* one in that cited above—"Congress shall have power, to suppress insurrections." So much for a *supposed* case. Here follows a *real* one. The whites in the District are *perpetrating these identical acts* upon seven thousand blacks daily. That Congress has power to restrain these acts in *one* case, all assert, and in so doing they assert the power "in *all* cases whatsoever." For the grant of power to suppress insurrections, is an *unconditional* grant, not hampered by provisos as to the color, shape, size, sex, language, creed, or condition of the insurgents. Congress derives its power to suppress this *actual* insurrection, from the same source whence it derived its power to suppress the *same* acts in the case *supposed*. If one case is an insurrection, the other is. The *acts* in both are the same; the *actors* only are different. In the one case, ignorant and degraded—goaded by the memory of the past, stung by the present, and driven to desperation by the fearful looking for of wrongs for ever to come. In the other, enlightened into the nature of *rights*, the principles of justice, and the dictates of the law of love, unprovoked by wrongs, with cool deliberation, and by system, they perpetrate these acts upon those to whom they owe unnumbered obligations for *whole lives* of unrequited service. On which side may palliation be pleaded, and which party may most reasonably claim an abatement of the rigors of law? If Congress has power to suppress such acts *at all*, it has power to suppress them *in* all.

It has been shown already that *allegiance* is exacted of the slave. Is the government of the United States unable to grant *protection* where it exacts *allegiance?* It is an axiom of the civilized world, and a maxim even with savages, that allegiance and protection are reciprocal and correlative. Are principles powerless with us which exact homage of barbarians? *Protection is the* CONSTITUTIONAL RIGHT *of every human being under the exclusive legislation of Congress who has not forfeited it by crime.*

In conclusion, I argue the power of Congress to abolish slavery in the District, from Art. 1, sec. 8, clause 1, of the constitution: "Congress shall have power to provide for the common defence and the general welfare of the United States." Has the government of the United States no power under this grant, to legislate within its own exclusive jurisdiction on subjects that vitally affect its interests? Suppose the slaves in the District should rise upon their masters, and the United States' government, in quelling the insurrection, should kill any number of them. Could their masters claim compensation of the government? Manifestly not; even though no proof existed that the particular slaves killed were insurgents. This was precisely the point at issue between those masters, whose slaves were killed by the State troops at the time of the Southampton insurrection, and the Virginia Legislature; no evidence was brought to show that the slaves killed by the troops were insurgents; yet the Virginia Legislature decided that their masters were *not entitled to compensation.* They proceeded on the sound principle, that a government may in self-protection destroy the claim of its subjects even to that which has been recognised as property by its own acts. If in providing for the common defence, the United States' government, in the case supposed, would have power to destroy slaves both as *property* and *persons*, it surely might stop *half-way*, destroy them *as property* while it legalized their existence as *persons*, and thus provided for the common defence by giving them a personal and powerful interest in the government, and securing their strength for its defence.

Like other Legislatures, Congress has power to abate nuisances—to remove or tear down unsafe buildings—to destroy infected cargoes—to lay injunctions upon manufactories injurious to the public health—and thus to "provide for the common defence and general welfare" by destroying individual property, when it puts in jeopardy the public weal.

Granting, for argument's sake, that slaves are "property" in the District of Columbia—if Congress has a right to annihilate property in the District when the public safety requires it, it may surely annihilate its existence *as* property when the public safety requires it, especially if it transform into a *protection* and *defence* that which as *property* periled the public interests. In the District of Columbia there are, besides the United States' Capitol, the President's house, the national offices, &c. of the Departments of State, Treasury, War, and Navy, the General Post-office, and Patent Office. It is also the residence of the President, all the highest officers of the government, both houses of Congress, and all the foreign ambassadors. In this same District there are also *seven thousand slaves.* Jefferson, in his Notes on Va. p. 241, says of slavery, that "the State permitting one half of its citizens to trample on the rights of the other, *transforms them into enemies;*" and Richard Henry Lee, in the Va. House of Burgesses in 1758, declared that to those who held them, "*slaves must be natural enemies.*" Is Congress so *impotent* that it *cannot*

exercise that right pronounced both by municipal and national law, the most sacred and universal—the right of self-preservation and defence? Is it shut up to the *necessity* of keeping seven thousand "enemies" in the heart of the nation's citadel? Does the iron fiat of the constitution doom it to such imbecility that it *cannot* arrest the process that *made* them "enemies," and still goads to deadlier hate by fiery trials, and day by day adds others to their number? Is *this* providing for the common defence and general welfare? If to rob men of rights excites their hate, freely to restore them and make amends, will win their love.

By emancipating the slaves in the District, the government of the United States would disband an army of "enemies," and enlist "for the common defence and general welfare," a body guard of *friends* seven thousand strong. In the last war, a handful of British soldiers sacked Washington city, burned the capitol, the President's house, and the national offices and archives; and no marvel, for thousands of the inhabitants of the District had been "TRANSFORMED INTO ENEMIES." Would *they* beat back invasion? If the national government had exercised its constitutional "power to provide for the common defence and to promote the general welfare," by turning those "enemies" into friends, then, instead of a hostile ambush lurking in every thicket inviting assault, and secret foes in every house paralyzing defence, an army of allies would have rallied in the hour of her calamity, and shouted defiance from their munitions of rocks; whilst the banner of the republic, then trampled in dust, would have floated securely over FREEMEN exulting amidst bulwarks of strength.

To show that Congress can abolish slavery in the District, under the grant of power "to provide for the common defence and to promote the general welfare," I quote an extract from a speech of Mr. Madison, of Va., in the first Congress under the constitution, May 13, 1789. Speaking of the abolition of the slave trade, Mr. Madison says: "I should venture to say it is as much for the interests of Georgia and South Carolina, as of any state in the union. Every addition they receive to their number of slaves tends to *weaken* them, and renders them less capable of self-defence. In case of hostilities with foreign nations, they will be the means of *inviting* attack instead of repelling invasion. It is a necessary duty of the general government to protect every part of the empire against danger, as well *internal* as external. *Every thing, therefore, which tends to increase this danger, though it may be a local affair, yet if it involves national expense or safety, it becomes of concern to every part of the union, and is a proper subject for the consideration of those charged with the general administration of the government.* See Cong. Reg. vol. 1, p. 310–11.

WYTHE.

POSTSCRIPT.

My apology for adding a *postscript*, to a discussion already perhaps too protracted, is the fact that the preceding sheets were in the hands of the printer, and all but the concluding pages had gone through the press, before the passage of Mr. Calhoun's late resolutions in the Senate of the United States. A proceeding so extraordinary,—if indeed the time has not passed when *any* acts of Congress in derogation of freedom and in deference to slavery, can be deemed extraordinary,—should not be suffered to pass in silence at such a crisis as the present; especially as the passage of one of the resolutions by a vote of 36 to 8, exhibits a shift of position on the part of the South, as sudden as it is unaccountable, being nothing less than the surrender of a fortress which until then they had defended with the pertinacity of a blind and almost infuriated fatuity. Upon the discussions during the pendency of the resolutions, and upon the vote, by which they were carried, I make no comment, save only to record my exultation in the fact there exhibited, that great emergencies are *true touchstones*, and that henceforward, until this question is settled, whoever holds a seat in Congress will find upon, and all around him, a pressure strong enough to TEST him—a focal blaze that will find its way through the carefully adjusted cloak of fair pretension, and the sevenfold brass of two-faced political intrigue, and no-faced *non-committalism*, piercing to the dividing asunder of joints and marrow. Be it known to every northern man who aspires to a seat in Congress, that hereafter it is the destiny of congressional action on this subject, to be a MIGHTY REVELATOR—making secret thoughts public property, and proclaiming on the house-tops what is whispered in the ear—smiting off masks, and bursting open sepulchres beautiful outwardly, and heaving up to the sun their dead men's bones. To such we say,—*Remember the Missouri Question, and the fate of those who then sold the North, and their own birthright!*

Passing by the resolutions generally without remark—the attention of the reader is specially solicited to Mr. Clay's substitute for Mr. Calhoun's fifth resolution.

"Resolved, That when the District of Columbia was ceded by the states of Virginia and Maryland to the United States, domestic slavery existed in both of these states, including the ceded territory, and that, as it still continues in both of them, it could not be abolished within the District without a violation of that good faith, which was implied in the cession and in the acceptance of the territory; nor, unless compensation were made to the proprietors of slaves, without a manifest infringement of an amendment to the constitution of the United States; nor without exciting a degree of just alarm and apprehension in the states recognising slave— far transcending in mischievous tendency, any possible benefit which could be accomplished by the abolition."

By voting for this resolution, the south by a simultaneous movement, shifted its mode of defence, not so much by taking a position entirely new, as by attempting to refortify an old one—never much trusted in, and abandoned mainly long ago, as being unable to hold out against assault however

unskilfully directed. In the debate on this resolution, though the southern members of Congress did not *professedly* retreat from the ground hitherto maintained by them—that Congress has no power by the constitution to abolish slavery in the District—yet in the main they silently drew off from it.

The passage of this resolution—with the vote of every southern senator, forms a new era in the discussion of this question.

We cannot join in the lamentations of those who bewail it. We hail it, and rejoice in it. It was as we would have had it—offered by a southern senator, advocated by southern senators, and on the ground that it "was no compromise"—that it embodied the true southern principle—that "this resolution stood on as high ground as Mr. Calhoun's."—(Mr. Preston)—"that Mr. Clay's resolution was as strong as Mr. Calhoun's"—(Mr. Rives)—that "the resolution he (Mr. Calhoun) now refused to support, was as strong as his own, and that in supporting it, there was no abandonment of principle by the south."—(Mr. Walker, of Mi.)—further, that it was advocated by the southern senators generally as an expression of their views, and as setting the question of slavery in the District on its *true* ground—that finally when the question was taken, every slaveholding senator, including Mr. Calhoun himself, voted for the resolution.

By passing this resolution, and with such avowals, the south has surrendered irrevocably the whole question at issue between them and the petitioners for abolition in the District. It has, unwittingly but explicitly, conceded the main question argued in the preceding pages.

The *only* ground taken against the right of Congress to abolish slavery in the District is, that slavery existed in Maryland and Virginia when the cession was made, and "*as it still continues in both of them*, it could not be abolished without a violation of that good faith which was implied in the cession," &c. The *sole argument* is *not* that exclusive *sovereignty* has no power to abolish slavery within its jurisdiction, *nor* that the powers of even *ordinary legislation* cannot do it,—*nor* that the clause granting Congress "exclusive legislation in all cases whatsoever over such District," gives no power to do it; but that the *unexpressed expectation* of one of the parties that the other would not "in *all* cases" *use* the power which said party had consented *might be used* "*in all cases*," *prohibits* the use of it. The only cardinal point in the discussion, is here not only *yielded*, but formally laid down by the So[illegible] as the leading article in their creed on the question of Congressional jurisdiction over slavery in the District. The *sole reason* given why Congress should not abolish, and the sole evidence that if it did, such abolition would be a violation of "good faith," is that "*slavery still continues in those states*,"—thus explicitly admitting, that if slavery did *not* "still continue" in those States, Congress *could* abolish it in the District. The same admission is made also in the *premises*, which state that slavery existed in those states *at the time of the cession*, &c. Admitting that if it had *not* existed there then, but had grown up in the District under *United States' laws*, Congress might constitutionally abolish it. Or that if the ceded parts of those states had been the *only* parts in which slaves were held under their laws, Congress might have abolished in such a contingency also. The cession in that case leaving no slaves in those states,—no "good faith," would be "implied" in it, nor any "violated," by an act of abolition. The principle of the resolution makes this further admission, that if Maryland and Virginia should at once abolish their slavery, Congress might at once abolish it in the District. The principle goes even further than this, and *requires* Congress in such case to abolish slavery in the District "by the *good faith implied* in the cession and acceptance of the territory." Since,

according to the spirit and scope of the resolution, this "implied good faith" of Maryland and Virginia in making the cession, was that Congress would do nothing within the District which should go to counteract the policy, or bring into disrepute the "institutions," or call in question the usages, or even in any way ruffle the prejudices of those states, or do what *they* might think would unfavorably bear upon their interests; *themselves* of course being the judges.

But let us dissect another limb of the resolution. What is to be understood by "that good faith which was IMPLIED!" It is of course an admission that such a condition was not *expressed* in the acts of cession—that in their *terms* there is nothing restricting the power of Congress on the subject of slavery in the District—not a *word* alluding to it, nor one inserted with such an *intent*. This "implied faith," then, rests on no clause or word in the United States' Constitution, or in the acts of cession, or in the acts of Congress accepting the cession, nor does it rest on any declarations of the legislatures of Maryland and Virginia made at the time, or in that generation, nor on any *act* of theirs, nor on any declaration of the *people* of those states, nor on the testimony of the Washingstons, Jeffersons, Madisons, Chaces, Martins, and Jennifers, of those states and times. The assertion rests *on itself alone!* Mr. Clay and the oth senators who voted for the resolution, *guess* that Maryland and Virgini *supposed* that Congress would by no means *use* the power given them by the constitution, except in such ways as would be well pleasing in the eyes of those states; especially as one of them was the "Ancient Dominion!" And now after the lapse of half a century, this *assumed expectation* of Maryland and Virginia, the existence of which is mere matter of conjecture with tho 36 senators, is conjured up and duly installed upon the judgment-seat of final appeal, before whose nod constitutions are to flee away, and with whom, solemn grants of power and explicit guaranties are when weighed in the balance, altogether lighter than vanity!

But let us survey it in another light. Why did Maryland and Virginia leave so much to be "*implied*?" Why did they not in some way *express* what lay so near their hearts? Had their vocabulary run so low that a single word could not not be eked out for the occasion? Or were those states so bashful of a sudden that they dare not speak out and tell what they wanted? Or did they take it for granted that Congress would always act in the premises according to their wishes, and that too, without their *making known* their wishes? If, as honorable senators tell us, Maryland and Virginia did verily travail with such abounding *faith*, why brought they forth no *works?*

It is as true in *legislation* as in religion, that the only *evidence* of "faith" is *works*, and that "faith" *without* works is *dead*, i. e. has no *power*. But here, forsooth, a blind implication with nothing *expressed*, an "implied" *faith* without works, is *omnipotent*. Mr. Clay is lawyer enough to know that even a *senatorial hypothesis* as to *what must have been the understanding* of Maryland and Virginia about congressional exercise of constitutional power, *abrogates no grant*, and that to plead it in a court of law, would be of small service except to jostle "their Honors'" gravity! He need not be told that the constitution gives Congress "power to exercise exclusive legislation in all cases whatsoever over such District." Nor that the legislatures of Maryland and Virginia constructed their acts of cession with this clause *before their eyes*, and that both of them declared those acts made "in *pursuance*" of said clause. Those states were aware that the United States in their constitution had left nothing to be "*implied*" as to the power of Congress over the District;—an admonition quite sufficient one would

think to put them on their guard, and induce them to eschew vague implications and resort to *stipulations*. Full well did they know also that those were times when, in matters of high import, *nothing* was left to be "implied." The colonies were then panting from a twenty years' conflict with the mother country, about bills of rights, charters, treaties, constitutions, grants, limitations, and *acts of cession*. The severities of a long and terrible discipline had taught them to guard at all points *legislative grants*, that their exact import and limit might be self-evident—leaving no scope for a blind "faith," that *somehow* in the lottery of chances there would be no blanks, but making all sure by the use of explicit terms, and wisely chosen words, and *just enough* of them. The Constitution of the United States with its amendments, those of the individual states, the national treaties, the public documents of the general and state governments at that period, show the universal conviction of legislative bodies, that when great public interests were at stake, nothing should be left to be "implied."

Further: suppose Maryland and Virginia had expressed their "implied faith" in *words*, and embodied it in their acts of cession as a proviso, declaring that Congress should not "exercise exclusive legislation in *all* cases whatsoever over the District," but that the "case" of *slavery* should be an exception: who does not know that Congress, if it had accepted the cession on those terms, would have violated the Constitution; and who that has ever studied the free mood of those times in its bearings on slavery—proofs of which are given in scores on the preceding pages—can for an instant believe that the people of the United States would have altered their Constitution for the purpose of providing for slavery an inviolable sanctuary; that when driven in from its outposts, and everywhere retreating discomfited before the march of freedom, it might be received into everlasting habitations on the common homestead and hearth-stone of this free republic? Besides, who can believe that Virginia made such a condition, or cherished such a purpose, when at that very moment, Washington, Jefferson, Wythe, Patrick Henry St. George Tucker, and almost all her illustrious men, were advocating the abolition of slavery by law. When Washington had said, two years before, Maryland and Virginia "must have laws for the gradual abolition of slavery and at a period *not remote*;" and when Jefferson in his letter to Price, three years before the cession, had said, speaking of Virginia, "This is the next state to which we may turn our eyes for the interesting spectacle of justice in conflict with avarice and oppression—a conflict in which THE SACRED SIDE IS GAINING DAILY RECRUITS;" when voluntary emancipations on the soil were then progressing at the rate of between one and two thousand annually, (See Judge Tucker's "Dissertation on Slavery," p. 73;) when the public sentiment of Virginia had undergone, and was undergoing so mighty a revolution that the idea of the continuance of slavery as a permanent system could not be *tolerated*, though she then contained about half the slaves in the Union. Was this the time to stipulate for the *perpetuity* of slavery under the exclusive legislation of Congress? and that too at the *same* session of Congress when *every one* of her delegation voted for the abolition of slavery in the North West Territory; a territory which she had herself ceded to Congress, and along with it had surrendered her jurisdiction over many of her citizens, inhabitants of that territory, who held slaves there—and whose slaves were emancipated by that act of Congress, in which all her delegation with one accord participated?

Now in view of the universal belief then prevalent, that slavery in this country was doomed to short life, and especially that in Maryland and Virginia it would be *speedily* abolished—are we to be told that those states *de-*

signed to bind Congress *never* to terminate it? Are we to adopt the monstrous conclusion that this was the *intent* of the Ancient Dominion—thus to *bind* the United States by an "implied faith," and that when the United States *accepted* the cession, she did solemnly thus plight her troth, and that Virginia did then so *understand* it? Verily one would think that honorable senators supposed themselves deputed to do our *thinking* as well as our legislation, or rather, that they themselves were absolved from such drudgery by virtue of their office!

Another absurdity of this dogma about "implied faith" is, that where there was no power to exact an *express* pledge, there was none to demand an *implied* one, and where there was no power to *give* the one, there was none to give the *other*. We have shown already that Congress could not have accepted the cession with such a condition. To have signed away a part of its constitutional grant of power would have been a *breach* of the Constitution. Further, the Congress which accepted the cession was competent to pass a resolution pledging itself not to *use all* the power over the District committed to it by the Constitution. But here its power ended. Its resolution would only bind *itself*. Could it bind the *next* Congress by its authority? Could the members of one Congress say to the members of another, because we do not choose to exercise all the authority vested in us by the Constitution, therefore you *shall* not? This would have been a prohibition to do what the Constitution gives power to do. Each successive Congress would still have gone to the Constitution for its power, brushing away in its course the cobwebs stretched across its path by the officiousnes of an impertinent predecessor. Again, the legislatures of Virginia and Maryland, had no power to bind Congress, either by an express or an implied pledge, never to abolish slavery in the District. Those legislatures had no power to bind *themselves* never to abolish slavery within their own territories—the ceded parts included. Where then would they get power to bind *another* not to do what they had no power to bind themselves not to do? If a legislature could not in this respect control the successive legislatures of its own State, could it control the successive Congresses of the United States?

But perhaps we shall be told, that the "implied faith" in the acts of cession of Maryland and Virginia was *not* that Congress should *never* abolish slavery in the District, but that it should not do it until *they* had done it within their bounds! Verily this "faith" comes little short of the faith of miracles! "A good rule that works both ways." First, Maryland and Virginia have "good faith" that Congress will *not* abolish until *they* do; and then just as "good faith" that Congress *will* abolish *when* they do! Excellently accommodated! Did those States suppose that Congress would legislate over the national domain, the common jurisdiction of *all*, for Maryland and Virginia alone? And who, did they suppose, would be judges in the matter?—themselves merely? or the whole Union?

This "good faith implied in the cession" is no longer of doubtful interpretation. The principle at the bottom of it, when fairly stated, is this:—That the Government of the United States are bound in "good faith" to do in the District of Columbia, without demurring, just what and when, Maryland and Virginia do in their own States. In short, that the general government is eased of all the burdens of legislation within its exclusive jurisdiction, save that of hiring a scrivener to copy off the acts of the Maryland and Virginia legislatures as fast as they are passed, and engross them, under the title of "Laws of the United States, for the District of Columbia!" A slight additional expense would also be incurred in keeping up an express between the capitols

of those States and Washington city, bringing Congress from time to time its "*instructions*" from head quarters—instructions not to be disregarded without a violation of that "good faith implied in the cession," &c.

This sets in strong light the advantages of "our glorious Union," if the doctrine of Mr. Clay and the thirty-six Senators be orthodox. The people of the United States have been permitted to set up at their own expense, and on their own territory, two great *sounding boards* called "Senate Chamber" and "Representatives' Hall," for the purpose of sending abroad "by authority" *national* echoes of *state* legislation!—permitted also to keep in their pay a corps of pliant *national* musicians, with peremptory instructions to sound on any line of the staff according as Virginia and Maryland may give the *sovereign* key note!

Though this may have the seeming of mere raillery, yet an analysis of the resolution and of the discussions upon it, will convince every fair mind that it is but the legitimate carrying out of the *principle* pervading both. They proceed virtually upon the hypothesis that the will and pleasure of Virginia and Maryland are *paramount* to those of the *Union*. If the main design of setting apart a federal district had been originally the accommodation of Maryland, Virginia, and the south, with the United States as an *agent* to consummate the object, there could hardly have been higher assumption or louder vaunting. The sole object of *having* such a District was in effect totally perverted in the resolution of Mr. Clay, and in the discussions of the entire southern delegation, upon its passage. Instead of taking the ground, that the benefit of the whole Union was the sole *object* of a federal district, that it was designed to guard and promote the interests of *all* the states, and that it was to be legislated over *for this end*—the resolution proceeds upon an hypothesis *totally the reverse*. It takes a single point of *state* policy, and exalts it above NATIONAL interests, utterly overshadowing them; abrogating national *rights;* making void a clause of the Constitution; humbling the general government into a subject—crouching for favors to a superior, and that too *on its own exclusive jurisdiction*. All the attributes of sovereignty vested in Congress by the Constitution it impales upon the point of an alleged *implication*. And this is Mr. Clay's peace-offering, to appease the lust of power and the ravenings of state encroachment! A "compromise," forsooth! that sinks the general government on *its own territory* into a mere colony, with Virginia and Maryland for its "mother country!" It is refreshing to turn from these shallow, distorted constructions and servile cringings, to the high bearing of other southern men in other times; men, who in their character of legislators and lawyers, disdained to accommodate their interpretations of constitutions and charters to geographical lines, or to bend them to the purposes of a political canvass. In the celebrated case of Cohens *vs.* the State of Virginia, Hon. William Pinkney, late of Baltimore, and Hon. Walter Jones, of Washington city, with other eminent constitutional lawyers, prepared an elaborate written opinion, from which the following is an extract: "Nor is there any danger to be apprehended from allowing to Congressional legislation with regard to the District of Columbia, its FULLEST EFFECT. Congress is responsible to the States, and to the people for that legislation. It is in truth the legislation of the states over a district placed under their control for *their own benefit*, not for that of the District, except as the prosperity of the District is involved, and necessary to the *general advantage*."—[Life of Pinkney, p. 612.]

The profound legal opinion, from which this is an extract, was elaborated at great length many years since, by a number of the most distin-

guished lawyers in the United States, whose signatures are appended to it. It is specific and to the point. It asserts, 1st, that Congressional legislation over the District, is "the legislation of the *States* and the *people*," (not of *two* states, and a mere *fraction* of the people ;) 2d. "Over a District placed under *their* control," i. e. under the control of the *whole* of the States, not under the control of *two twenty-sixths* of them. 3d. That it was thus put under their control "*for* THEIR OWN *benefit*," the benefit of *all* the States *equally;* not to secure special benefits to Maryland and Virginia, (or what it might be *conjectured* they would regard as benefits.) 4th. It concludes by asserting that the design of this exclusive control of Congress over the District was "not for the benefit of the *District*," except as that is *connected* with, and *a means of promoting* the *general* advantage. If this is the case with the *District*, which is *directly* concerned, it is pre-eminently so with Maryland and Virginia, who are but *indirectly* interested, and would be but remotely affected by it. The argument of Mr. Madison in the Congress of '89, an extract from which has been given on a preceding page, lays down the same principle; that though any matter "*may be a local affair, yet if it involves national* EXPENSE OR SAFETY, *it becomes of concern to every part of the union, and is a proper subject for the consideration of those charged with the general administration of the government.*" Cong. Reg. vol. 1. p. 310, 11.

But these are only the initiatory absurdities of this "good faith *implied*." The thirty-six senators aptly illustrate the principle, that error not only conflicts with truth, but is generally at issue with itself. For if it would be a violation of "good faith" to Maryland and Virginia, for Congress to abolish slavery in the District, it would be *equally* a violation for Congress to do it *with the consent*, or even at the earnest and unanimous petition of the people of the District: yet for years it has been the southern doctrine, that if the people of the District demand of Congress relief in this respect, it has power, as their local legislature, to grant it, and by abolishing slavery there, carry out the will of the citizens. But now new light has broken in! The optics of the thirty-six have pierced the millstone with a deeper insight, and discoveries thicken faster than they can be telegraphed! Congress has no power, O no, not a modicum, to help the slaveholders of the District, however loudly they may clamor for it. The southern doctrine, that Congress is to the District a mere local Legislature to do its pleasure, is tumbled from the genitive into the vocative! Hard fate—and that too at the hands of those who begat it! The reasonings of Messrs. Pinckney, Wise, and Leigh, are now found to be wholly at fault, and the chanticleer rhetoric of Messrs. Glascock and Garland stalks featherless and crest-fallen. For, Mr. Clay's resolution sweeps by the board all those stereotyped common-places, as "Congress a local Legislature," "consent of the District," "bound to consult the wishes of the District," &c. &c., which for the last two sessions of Congress have served to eke out scanty supplies. It declares, that *as slavery existed in Maryland and Virginia at the time of the cession, and as it still continues in both those states, it could not be abolished in the District without a violation of 'that good faith,' &c.*

But let us see where this principle of the *thirty-six* will lead us. If "implied faith" to Maryland and Virginia *restrains* Congress from the abolition of slavery in the District, it *requires* Congress to do in the District what those states have done within their bounds, i. e., restrain *others* from abolishing it. Upon the same principle Congress is *bound*, by the doctrine of Mr. Clay's resolution, to *prohibit emancipation* within the District. There is no *stopping place* for this plighted "faith." Congress must

not only refrain from laying violent hands on slavery, *itself*, and see to it that the slaveholders themselves do not, but it is bound to keep the system up to the Maryland and Virginia standard of vigor!

Again, if the good faith of Congress to Virginia and Maryland requires that slavery should exist in the District, while it exists in those states, it requires that it should exist there *as* it exists in those states. If to abolish *every* form of slavery in the District would violate good faith, to abolish *the* form existing in those states, and to substitute a totally different one, would also violate it. The Congressional "good faith" is to be kept not only with *slavery*, but with the *Maryland and Virginia systems* of slavery. The faith of those states not being in the preservation of *a* system, but of *their* system; otherwise Congress, instead of *sustaining*, would counteract their policy—principles would be brought into action there conflicting with their system, and thus the true spirit of the "implied" pledge would be violated. On this principle, so long as slaves are "chattels personal" in Virginia and Maryland, Congress could not make them *real estate*, inseperable from the soil, as in Louisiana; nor could it permit slaves to read, nor to worship God according to conscience; nor could it grant them trial by jury, nor legalize marriage; nor require the master to give sufficient food and clothing; nor prohibit the violent sundering of families—because such provisions would conflict with the existing slave laws of Virginia and Maryland, and thus violate the "good faith implied," &c. So the principle of the resolution binds Congress in all these particulars: 1st. Not to abolish slavery in the District *until* Virginia and Maryland abolish. 2d. Not to abolish any *part* of it that exists in those states. 3d. Not to abolish any *form* or *appendage* of it still existing in those states. 4th. *To abolish* when they do. 5th. To increase or abate its rigors *when*, *how*, and *as* the same are modified by those states. In a word, Congressional action in the District is to float passively in the wake of legislative action on the subject in those states.

But here comes a dilemma. Suppose the legislation of those states should steer different courses—then there would be *two* wakes! Can Congress float in both? Yea, verily! Nothing is too hard for it! Its obsequiousness equals its "power of legislation in *all* cases whatsoever." It can float *up* on the Virginia tide, and ebb down on the Maryland at the same time. What Maryland does, Congress will do in the Maryland part. What Virginia does, Congress will do in the Virginia part. Though Congress might not always be able to run at the bidding of both *at once*, especially in different directions, yet if it obeyed orders cheerfully, and "kept in its place," according to its "good faith implied," impossibilities might not be rigidly exacted. True, we have the highest sanction for the maxim that no *man* can serve two masters—but if "corporations have *no* souls," analogy would absolve Congress on that score, or at most give it only *a very small soul*—not large enough to be at all in the way, as an *exception* to the universal rule laid down in the maxim!

In following out the absurdities of this "*implied* good faith," it will be seen at once that the doctrine of Mr. Clay's Resolution. extends to *all the subjects* of *legislation* existing in Maryland and Virginia, which exist also within the District. Every system, "institution," law, and established usage there, is placed beyond Congressional control equally with slavery, and by the same "implied faith." The abolition of the lottery system in the District as an *immorality*, was a flagrant breach of this "good faith" to Maryland and Virginia, as the system "still continued in those states." So to abolish imprisonment for debt, and capital punishment, to remodel the bank system, the power of corporations, the militia law, laws of

limitation, &c., in the District, *unless Virginia and Maryland took the lead*, would violate the "good faith implied in the cession," &c.

That in the acts of cession no such "good faith" was "implied by Virginia and Maryland as is claimed in the Resolution, we argue from the fact, that in 1784 Virginia ceded to the United States all her northwest territory, with the special proviso that her citizens inhabiting that territory should "have their *possessions* and *titles* confirmed to them, and be *protected* in the enjoyment of their *rights* and liberties." (See Journals of Congress vol. 9, p. 63.) The cession was made in the form of a deed, and signed by Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Munroe. Many of these inhabitants *held slaves*. Three years after the cession, the Virginia delegation in Congress *proposed* the passage of an ordinance which should abolish slavery, in that territory, and declare that it should never thereafter exist there. All the members of Congress from Virginia and Maryland voted for this ordinance. Suppose some member of Congress had during the passage of the ordinance introduced the following resolution: "Resolved, That when the northwest territory was ceded by Virginia to the United States, domestic slavery existed in that State, including the ceded territory, and as it still continues in that State, it could not be abolished within the territory without a violation of that good faith, which was implied in the cession and in the acceptance of the territory." What would have been the indignant response of Grayson, Griffin, Madison, and the Lees, in the Congress of '87, to such a resolution, and of Carrington, Chairman of the Committee, who reported the ratification of the ordinance in the Congress of '89, and of Page and Parker, who with every other member of the Virginia delegation supported it?

But to enumerate all the absurdities into which the thirty-six Senators have plunged themselves, would be to make a quarto inventory. We decline the task; and in conclusion, merely add that Mr. Clay in presenting this resolution, and each of the thirty-six Senators who voted for it, entered on the records of the Senate, and proclaimed to the world, a most unworthy accusation against the MILLIONS of American citizens who have during nearly half a century petitioned the national legislature to abolish slavery in the District of Columbia,—charging them either with the ignorance or the impiety of praying the nation to violate its "PLIGHTED FAITH." The resolution virtually indicts at the bar of public opinion, and brands with odium, all the Manumission Societies, the *first* petitioners for the abolition of slavery in the District, and for a long time the only ones, petioning from year to year through evil report and good report, still petitioning, by individual societies and in their national conventions.

But as if it were not enough to table the charge against such men as Benjamin Rush, William Rawle, John Sergeant, Robert Vaux, Cadwallader Colden, and Peter A. Jay,—to whom we may add Rufus King, James Hillhouse, William Pinkney, Thomas Addis Emmett, Daniel D. Tompkins, De Witt Clinton, James Kent, and Daniel Webster, besides eleven hundred citizens of the District itself, headed by their Chief Justice and judges—even the sovereign States of Pennsylvania, New-York, Massachusetts, and Vermont, whose legislatures have either memorialized Congress to abolish slavery in the District, or instructed their Senators to move such a measure, must be gravely informed by Messrs. Clay, Norvell, Niles, Smith, Pierce, Benton, Black, Tipton, and other honorable Senators, either that their perception is so dull, they know not whereof they affirm, or that their moral sense is so blunted they can demand without compunction a violation of the nation's faith!

We have spoken already of the concessions unwittingly made in this

resolution to the true doctrine of Congressional power over the District. For that concession, important as it is, we have small thanks to render. That such a resolution, passed with such an *intent*, and pressing at a thousand points on relations and interests vital to the free states, should be hailed, as it has been, by a portion of the northern press as a "compromise" originating in deference to northern interests, and to be received by us as a free-will offering of disinterested benevolence, demanding our gratitude to the mover,—may well cover us with shame. We deserve the humiliation and have well earned the mockery. Let it come!

If, after having been set up at auction in the public sales-room of the nation, and for thirty years, and by each of a score of "compromises," treacherously knocked off to the lowest bidder, and that without money and without price, the North, plundered and betrayed, *will not*, in this her accepted time, consider the things that belong to her peace before they are hidden from her eyes, then let her eat of the fruit of her own way, and be filled with her own devices! Let the shorn and blinded giant grind in the prison-house of the Philistines, till taught the folly of intrusting to Delilahs the secret and the custody of his strength.

Have the free States bound themselves by an oath never to profit by the lessons of experience? If lost to *reason*, are they dead to *instinct* also? Can nothing rouse them to cast about for self preservation? And shall a life of tame surrender be terminated by suicidal sacrifice?

A "COMPROMISE!" Bitter irony! Is the plucked and hood-winked North to be wheedled by the sorcery of another Missouri compromise? A compromise in which the South gained all, and the North lost all, and lost it for ever. A compromise which embargoed the free laborer of the North and West, and clutched at the staff he leaned upon, to turn it into a bludgeon and fell him with its stroke. A compromise which wrested from liberty her boundless birthright domain, stretching westward to the sunset, while it gave to slavery loose reins and a free course, from the Mississippi to the Pacific.

The resolution, as it finally passed, is here inserted. The original Resolution, as moved by Mr. Clay, was inserted at the head of this postscript with the impression that it was the *amended* form. It will be seen however, that it underwent no material modification.

"Resolved, That the interference by the citizens of any of the states, with the view to the abolition of slavery in the District, is endangering the rights and security of the people of the District; and that any act or measure of Congress designed to abolish slavery in the District, would be a violation of the faith implied in the cessions by the states of Virginia and Maryland, a just cause of alarm to the people of the slaveholding states, and have a direct and inevitable tendency to disturb and endanger the Union."

The vote upon the Resolution stood as follows:

Yeas.—Messrs. Allen, Bayard, Benton, Black, Buchanan, Brown, Calhoun, Clay, of Alabama, Clay, of Kentucky, Clayton, Crittenden, Cuthbert, Fulton, Grundy, Hubbard, King, Lumpkin, Lyon, Nicholas, Niles, Norvell, Pierce, Preston, Rives, Roane, Robinson, Sevier, Smith, of Connecticut, Strange, Tallmadge, Tipton, Walker, White, Williams, Wright, Young.

Nays.—Messrs. DAVIS, KNIGHT, McKEAN, MORRIS, PRENTISS, RUGGLES, SMITH, of Indiana, SWIFT, WEBSTER.